DOCUMENT RESUME

ED 204 984 EC 133 555

TITLE	Oversight on Education for All Handicapped Children Act, 1980. Oversight on Public Law 94-142, Education for All Handicapped Children Act. Part 2. Hearings before the Subcommittee on the Handicapped of the Committee on Labor and Human Resources, United States Senate, Ninety-Sixth Congress, Second Session (July 29 and 31, and September 10, 1980).
INSTITUTION	Congress of the U.S., Washington, D.C. Senate Committee on Labor and Human Resources.
PUB DATE	Sep 80
NOTE	626p.: Many pages with small print or poor print quality, therefore, the document is not available in hard copy.
EDRS PRICE	MF03 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Compliance (Legal): *Disabilities: Due Process: Elementary Secondary Education: *Federal Legislation: Hearings: Individualized Education Programs: Parent Participation: *Program Implementation: Student Placement: *Student Rights
IDENTIFIERS	Congress 96th: *Education for All Handicapped Children Act

ABSTRACT

The document contains proceedings from oversight hearings on the problems and difficulties of implementing P.L. 94-142, the Education for All Handicapped Children Act. Testimonies cover such issues as the failure to carry out effective and proper physical education programs, improper student placement, misapplication of the mainstreaming concept, and inadequate technical assistance and inservice training for teachers and administrators. Among the articles and memorandums, the following are included: "Determination of Eligibility for Special Education:" "Draft Final Report for a Study of Teacher Concerns with Public Law 94-142:" "Final Draft Policy Paper on Individualized Education Programs (IEP's):" "Going Wrong with Handicapped Rights:" "Implications of Noncategorical Special Education:" "Patterns of Physician Participation in the Evaluation of Handicapped Children for Special Education Programs--A Report on State Regulations:" "Policy Statement on Implementing Public Law 94-142, State-Federal Administrative Questions regarding the Education for All Handicapped Children Act:" "Results of a National Survey on Parents' Experiences in Participating in Individual Educational Plan Provisions of Public Law 94-142:" and Sensorimotor Integration Program preliminary assessment forms. Statements are presented from individuals representing organizations and agencies including the National Society for Autistic Children, American Federation of Teachers, National Association of School Psychologists, Office of Special Education and Rehabilitation Services, Association for Children and Adults with Learning Disabilities, and Special Olympics, Inc. A statement of the American Speech-Language-Hearing Association concludes the document with sections addressing early education, continuous education, the link between special education and related services, excessive paperwork, funding, identification, child count, evaluation, and implementation of the IEP. (SB)

ED204984

OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1980

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

OVERSIGHT ON PUBLIC LAW 94-142, EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

JULY 29 AND 31, AND SEPTEMBER 10, 1980

PART 2

◆

Printed for the use of the
Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE
69-322 O WASHINGTON : 1980

EC133555

COMMITTEE ON LABOR AND HUMAN RESOURCES

HARRISON A. WILLIAMS, Jr., New Jersey, *Chairman*

JENNINGS RANDOLPH, West Virginia
CLAIBORNE PELL, Rhode Island
EDWARD M. KENNEDY, Massachusetts
GAYLORD NELSON, Wisconsin
THOMAS F. EAGLETON, Missouri
ALAN CRANSTON, California
DONALD W. RIEGLE, Jr., Michigan
HOWARD M. METZENBAUM, Ohio

RICHARD S. SCHWEIKER, Pennsylvania
JACOB K. JAVITS, New York
ROBERT T. STAFFORD, Vermont
ORRIN G. HATCH, Utah
WILLIAM L. ARMSTRONG, Colorado
GORDON J. HUMPHREY, New Hampshire

Letitia Chambers, *Staff Director*
Steven J. Sacher, *General Counsel*
Majorie M. Whittaker, *Chief Clerk*
David A. Winston, *Minority Staff Director*

Subcommittee on the Handicapped

JENNINGS RANDOLPH, West Virginia, *Chairman*

THOMAS F. EAGLETON, Missouri
DONALD W. RIEGLE, Jr., Michigan

ROBERT T. STAFFORD, Vermont
RICHARD S. SCHWEIKER, Pennsylvania

Patria Forsythe, *Subcommittee Staff Director*
Sue Ellen Walbridge, *Minority Research Assistant*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

Tuesday, July 29, 1980

Page

Montague, Gen. Robert M., Jr., executive director, the Joseph P. Kennedy, Jr. Foundation and Special Olympics, Inc., accompanied by Bill Bagshaw, student; Nancy Moultrie, city of Alexandria, recreation for special needs office; and Peter Wheeler, Special Olympics office 2

Akerley, Edward M., representing the National Society for Autistic Children, accompanied by Mary S. Akerley, Mrs. Doris Weber, parent, National Government Activities Committee, Kansas City, Mo., representing United Cerebral Palsy, accompanied by Kathy Roy, assistant director, UCPA Governmental Activities Office; Dorothy Crawford, board of directors, Scottsdale, Ariz., representing Association for Children With Learning Disabilities; and Jacqueline Z. Mendelsohn, Silver Spring, Md., representing International Association of Parents of the Deaf, a panel 17

Rice, Francis R., advocate and legislative chairman, Vermont Association of Learning Disabilities, Montpelier, Vt 87

Saxman, Ruthann, chairman, Committee on the Handicapped, Blessed Sacrament Church, Alexandria, Va 108

Thursday, July 31, 1980

Shanker, Albert, president, American Federation of Teachers, AFL-CIO, accompanied by Greg Humphrey and Marilyn Rauth 116

Noshpitz, Joseph D., M.D., professor of psychiatry, George Washington School of Medicine; staff psychiatrist, Children's Hospital, Washington, D.C., representing the American Academy of Child Psychiatry and the American Psychiatric Association 164

Robinson, Dr. Sharon, director, National Education Association's Program for Instruction and Professional Development 181

Ramage, Jean, Ph. D., executive manager, professional relations, National Association of School Psychologists, and David R. Williams, M.D., Thomasville, N.C., representing the American Academy of Pediatrics, a panel 195

Boschwitz, Hon. Rudy, a U.S. Senator from the State of Minnesota 267

Fillbrandt, Aubrey W., principal, Winfair School, elementary director of elementary schools, Windom, Minn., representing American Corrective Therapy Association; James G. Foshee, Ph. D., assistant commissioner for mental retardation, Tennessee Department of Mental Health/Mental Retardation, representing the National State Mental Retardation Program Directors, Inc., Lana Ford, regional occupational therapist, assistant professor, occupational therapy curriculum, Medical College of Virginia, Virginia Commonwealth University, Richmond, Va., representing the American Occupational Therapy Association, Inc., a panel 268

Wednesday, September 10, 1980

Martin, Edwin W., Jr., Assistant Secretary, Office of Special Education and Rehabilitation Services, U.S. Department of Education, accompanied by James Stearns, Percy Bates, Robert Herman, Ed Sontag, Shirley Jones, and Jerry Vlasak 344

Ahart, Gregory J., Director, Human Resources Division, U.S. General Accounting Office, accompanied by Joe E. Totten and Alvin S. Finegold 438

STATEMENTS

Page

Ahart, Gregory J., Director, Human Resources Division, U.S. General Accounting Office, accompanied by Joe E. Totten and Alvin S. Finegold ... 438
  Prepared statement ... 448
Akerley, Edward M., representing the National Society for Autistic Children, accompanied by Mary S. Akerley, Mrs. Doris Weber, Parent, National Government Activities Committee, Kansas City, Mo., representing United Cerebral Palsy, accompanied by Kathy Roy, assistant director, UCPA Governmental Activities Office; Dorothy Crawford, board of directors, Scottsdale, Ariz., representing Association for Children With Learning Disabilities; and Jacqueline Z. Mendelsohn, Silver Spring, Md., representing International Association of Parents of the Deaf, a panel ... 17
  Joint prepared statement ... 20
American Academy of Pediatrics, David R. Williams, M.D., chairman, State chapter, prepared statement ... 221
American Occupational Therapy Association, Inc., prepared statement ... 327
American Speech-Language-Hearing Association, prepared statement ... 568
Association for Children and Adults With Learning Disabilities, Dorothy Crawford, board of directors, prepared statement ... 65
Boschwitz, Hon. Rudy, a U.S. Senator from the State of Minnesota ... 267
Fillbrandt, Aubrey W., principal, Winfair School, elementary director of elementary schools, Windom, Minn., representing American Corrective Therapy Association; James G. Foshee, Ph. D., assistant commissioner for mental retardation, Tennessee Department of Mental Health/Mental Retardation, representing the National State Mental Retardation Program Directors, Inc.; Lana Ford, Regional Occupational Therapist, assistant professor, occupational therapy curriculum, Medical College of Virginia, Virginia Commonwealth University, Richmond, Va., representing the American Occupational Therapy Association, Inc., a panel ... 268
  Prepared statement ... 271
International Association of Parents of the Deaf, Jacqueline Z. Mendelshohn, executive director, prepared statement ... 80
Martin, Edwin W., Jr., Assistant Secretary, Office of Special Education and Rehabilitation Services, U.S. Department of Education, accompanied by James Stearns, Percy Bates, Robert Herman, Ed Sontag, Shirley Jones, and Jerry Vlasak ... 344
  Prepared statement ... 398
Mentkowski, Thomas M., teacher/counselor, Silver Spring, Md., prepared statement ... 339
Montague, Gen. Robert M., Jr., executive director, the Joseph P. Kennedy, Jr. Foundation and Special Olympics, Inc., accompanied by Bill Bagshaw, student; Nancy Moultrie, city of Alexandria, recreation for special needs office; and Peter Wheeler, Special Olympics office ... 2
  Prepared statement (with attachment) ... 6
National Association of Social Workers, Inc., Helen Tyler, on behalf of, prepared statement ... 520
National Association of State Mental Retardation Program Directors, Inc., prepared statement ... 307
Noshpitz, Joseph D., M.D., professor of psychiatry, George Washington School of Medicine; staff psychiatrist, Children's Hospital, Washington, D.C., representing the American Academy of Child Psychiatry and the American Psychiatric Association ... 164
  Prepared statement ... 166
Ramage, Jean, Ph. D., executive manager, professional relations, National Association of School Psychologists, and David R. Williams, M.D., Thomasville, N.C., representing the American Academy of Pediatrics, a panel ... 195
  Prepared statement ... 199
Rice, Francis R., advocate and legislative chairman, Vermont Association of Learning Disabilities, Montpelier, Vt ... 87
  Prepared statement ... 91
Robinson, Dr. Sharon, director, National Education Association's Program for Instruction and Professional Development ... 181
  Prepared statement ... 183
Royer, Hon. Bill, a Representative in Congress from the State of California, prepared statement ... 340
Saxman, Ruthann, chairman, Committee on the Handicapped, Blessed Sacrament Church, Alexandria, Va ... 108

Saxman, Ruthann, chairman, Committee on the Handicapped, Blessed Sacrament Church, Alexandria, Va—Continued Page
- Prepared statement 111

Shanker, Albert, president, American Federation of Teachers, AFL-CIO, accompanied by Greg Humphrey and Marilyn Rauth 116
- Prepared statement 120

Sims, Mozelle, V.I.P.S.-Vancouver Involved Group/Seattle, prepared statement 525

Tice, Walter, vice president, American Federation of Teachers, AFL-CIO, prepared statement as presented to the House Subcommittee on Elect Education on October 9, 1979 (with attachment) 134

United Cerebral Palsy Associations, Inc., prepared statement 39

ADDITIONAL INFORMATION

Articles, publications, etc.:

- Determination of Eligibility for Special Education, memorandum from the Department of Education, State of Vermont, June 26, 1980 101
- Draft Final Report for a Study of Teacher Concerns With Public Law 94-142, prepared for the Bureau for Education of the Handicapped, from Roy Littlejohn Associates, Inc., October 6, 1978 149
- Final Draft Policy Paper on Individualized Education Programs (IEP's), from the Department of Health, Education, and Welfare, May 23, 1980... 359
- Going Wrong With Handicapped Rights, from the New York Times, July 21, 1980 161
- Implications of Noncategorical Special Education, by Laurence M. Lieberman, Ed D., from the Journal of Learning Disabilities, Vol. 13, No. 2, February 1980 104
- Patterns of Physician Participation in the Evaluation of Handicapped Children for Special Education Programs: A Report on State Regulations, excerpts from 242
- Policy statement on implementing Public Law 94-142, State-Federal administrative questions regarding the Education for All Handicapped Children Act, from the Council of Chief State School Officers 483
- Result of a National Survey on Parents' Experiences in Participating in Individual Educational Plan Provisions of Public Law 94-142 by National Committee for Citizens in Education, October 1980 529
- Sensorimotor Integration Program, preliminary assessment forms 287

Communications to:

Randolph, Hon. Jennings, chairman, Subcommittee on the Handicapped, from:

- Baucus, Hon. Max, a U.S. Senator from the State of Montana, October 22, 1980 (with enclosure) 560
- Kinney, Stephen M., SPED coordinator, Orange Southwest Supervisory Union, Randolph, Vt., September 24, 1980 517
- Martin, John F., director, Federal-State relations, Council of Chief State School Officers, Washington, D.C., September 4, 1980 482
- Perrone, Michela, Ph. D., executive director, the Joseph P. Kennedy Institute, Washington, D.C., September 5, 1980 506

Stafford, Hon Robert T., a U.S. Senator from the State of Vermont from:

- Auld, Representative Susan, House of Representatives, State of Vermont, August 28, 1980 444
- Hall, Keith L., superintendent of schools, Addison Northeast Supervisory Union District, Bristol, Vt., September 23, 1980 512
- Johnson, Charles B., superintendent of schools, Montpelier Public School System, Montpelier, Vt., September 24, 1980 510
- Lewis, Thomas E., superintendent, Windham Central Supervisory Union, Newfane, Vt., September 25, 1980 509
- Lincoln, William A., superintendent of schools, Washington West Supervisory Union, Moretown, Vt., September 22, 1980 515
- Messier, Norman E., special programs director, Orleans-Essex North Supervisory Union, Derby Center, Vt., September 29, 1980 518
- Murphy, Francis V., director, special education, Colchester School District, Colchester, Vt., September 29, 1980 526
- Pearl Houghton D., superintendent of schools, Rutland Windsor Supervisory Union, Ludlow, Vt., September 29, 1980 508
- Pentkowski, Raymond J., assistant superintendent, Addiston-Rutland Supervisory Union, Fairhaven, Vt., September 22, 1980 516

Communications to—Continued

Page
- Proulx, Raymond J., superintendent of schools, Barre Town School District, Barre, Vt., September 25, 1980 514
- Rocray, Barbara, director of special services, Windham Southeast Supervisory Union Special Services Center, Brattleboro, Vt., September 29, 1980 519

Questions and answers:

- American Academy of Pediatrics responses to questions asked by Senator Randolph 239
- American Federation of Teachers, responses to questions asked by Senator Randolph 162
- American Occupational Therapy Association, Inc., responses to questions asked by Senator Randolph 336
- Association for Children and Adults With Learning Disabilities, responses to questions asked by Senator Randolph 75
- Fillbrandt, Aubrey, principal, Winfair School, Windom Public Schools, Windom, Minn., responses to questions asked by Senator Randolph 284
- International Association of Parents of the Deaf, Inc., responses to questions asked by Senator Randolph 85
- Martin, Edwin W., Assistant Secretary for Special Education and Rehabilitative Services, Department of Education responses to questions asked by Senator Randolph 420
- National Association of School Psychologists, responses to questions asked by Senator Randolph 206
- National Association of State Mental Retardation Program Directors, Inc., responses to questions asked by Senator Randolph 320
- National Education Association responses to questions asked by Senator Randolph 192
- National Society for Autistic Children responses to questions asked by Senator Randolph 34
- Noshpitz, Dr. Joseph D., M.D., professor of psychiatry, George Washington School of Medicine responses to questions asked by Senator Randolph 179
- Special Olympics, Inc., responses to questions asked by Senator Randolph. 14
- United Cerebral Palsy Associations, Inc., responses to questions asked by Senator Randolph 59
- U.S. General Accounting Office responses to questions asked by Senator Randolph 476
- Vermont Association of Learning Disabilities responses to questions asked by Senator Randolph 99

OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1980

TUESDAY, JULY 29, 1980

U.S. SENATE,
SUBCOMMITTEE ON THE HANDICAPPED,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 4232, Dirksen Senate Office Building, Senator Jennings Randolph (chairman of the subcommittee) presiding.

Present: Senators Randolph and Stafford.

Senator **RANDOLPH**. A pleasant good morning to all who are present for this hearing.

We ask the witnesses who are to counsel with us to come to the testimony table.

We hope to have members of our subcommittee present for the hearing. Our schedule in the Senate is difficult with the nuclear waste legislation in the Senate under discussion and with important votes scheduled. That measure is under the jurisdiction of the Energy and Natural Resources Committee as well as the Committee on Environment and Public Works, with an added interest expressed, more by way of amendment than jurisdiction, by the Governmental Affairs Committee. It is a very complex bill, and it is very crucial that members give close attention to amendments that are pending.

So we will have some difficulty today, because members of our subcommittee are necessarily going to have to be on the Senate floor.

General Montague, even before my statement, will you introduce those who are sitting at the table with you?

General **MONTAGUE**. Yes, Mr. Chairman.

I have brought with me Bill Bagshaw, who is a student; Miss Nancy Moultrie, who is from the city of Alexandria Recreation for Special Needs Office; and on my right, Mr. Peter Wheeler, from the Special Olympics Office. They are simply backups, and then I will introduce Bill at the end of my testimony.

Senator **RANDOLPH**. Thank you very much, General Montague.

We are particularly gratified that this morning we can welcome those who come from our neighbor country to the north.

I would like to ask those Canadians who are here from the Parliament and with the group to stand so that we may all applaud you. [Applause.]

I have been to Canada recently in connection with the Parliamentary Conference between Canadians and Americans, which was helpful, as these conferences always give us an opportunity to exchange our thinking and to hopefully cooperate in many programs and projects on a broad scale between our two nations.

I particularly recall last year when I was at Campobello Island, which is the international peace park, as you well know, between Canada and our own country. We were having there a Peace and Human Rights Conference in the structures that are still standing of the Franklin Roosevelt family.

My many, many visits to Canada have always been not only interesting and pleasant, but very, very informative. I correspond with a Dr. McBride, who sends me his newest poems. He writes poetry, as well as taking care of the medical needs of people on Campobello Island.

This is the 13th in a series of oversight hearings on the implementation of Public Law 94-142, the Education for All Handicapped Children Act, which we began 1 year ago, in July of 1979. During these hearings to date we have heard over 100 witnesses and have received written testimony from many more who share our commitment to the goals contained in Public Law 94-142.

These hearings were organized so that the subcommittee could hear first from parents and teachers of handicapped children and from handicapped students themselves, as well as local, county, and State administrators. It was our hope that having heard from these groups who must work on a day-to-day basis to implement this important legislation we would know more about the problems and difficulties they are experiencing with implementing this law; this data could then be brought before not only this subcommittee but before the administration and national advocacy groups in hopes that by working together we can help them find alternatives or solutions to their problems.

We are pleased that all of the national organizations, with the exception of one, who were invited to appear are here today. It is our hope that you have had an opportunity to review the testimony presented to date, and we welcome your comments and recommendations at this time.

Our first witness this morning is Gen. Robert M. Montague from the Joseph P. Kennedy, Jr. Foundation.

You have introduced those men and women with you, so General, we ask that you proceed.

We want the full value of your statement, but if your statement is running 30 or 40 minutes, we ask you to summarize it. Your full statement will be included in the published record, but you might touch on those points that you feel need special attention. I believe we have even said we hoped you could do it in 5 minutes' so the 5-minute rule is in effect.

STATEMENT OF GENERAL ROBERT M. MONTAGUE, JR., EXECUTIVE DIRECTOR, THE JOSEPH P. KENNEDY, JR. FOUNDATION AND SPECIAL OLYMPICS, INC., ACCOMPANIED BY BILL BAGSHAW, STUDENT; NANCY MOULTRIE, CITY OF ALEXANDRIA, RECREATION FOR SPECIAL NEEDS OFFICE; AND PETER WHEELER, SPECIAL OLYMPICS OFFICE

General MONTAGUE. I think we can do that, Mr. Chairman. I am very pleased that I have been invited to testify on the physical education aspects of Public Law 94-142. This subcommittee has been a major force in improving and expanding physical education as one component of full education for handicapped children.

At the urging of the Kennedy Foundation and many other organizations and individuals, the subcommittee saw that physical education for all handicapped children was mandated by Public Law 94-142.

As I will report in a minute, that congressional mandate is not being carried out effectively and properly, in our opinion.

First, let me quickly establish the credentials of the two organizations of which I am pleased and honored to be a part, the Kennedy Foundation and Special Olympics.

In the early 1960's, complementing President John F. Kennedy's emphasis on physical fitness of all Americans, and especially children, the Kennedy Foundation, whose efforts concentrate on helping mentally retarded individuals, focused a great deal of its attention on physical fitness and physical education of mentally retarded children. The foundation learned through its research and research and study by others that appropriate physical education benefited the physical growth, self-concept and even intellectual development of mentally retarded and other handicapped children.

The foundation also discovered that pitifully few handicapped children were receiving adequate physical education in schools.

The Kennedy Foundation responded to this unfortunate and unfair condition, by creating in 1968 Special Olympics—a program offering year-round physical fitness and sports training and athletic competition to mentally retarded children and adults as well.

Through Special Olympics, the foundation wanted to do more than provide opportunities to participate in physical fitness and sports training; it hoped to educate the public about mental retardation and to get public support for programs and legislation such as the Education for All Handicapped Children Act.

We believe that we have been quite successful. For example, the success of Special Olympics is shown by the following: There are now more than 1 million participants; 97 percent of the counties of the United States have special olympics programs; more than 20,000 Special Olympics events take place each year; over 350,000 volunteers supply the manpower; public awareness is very high; public acceptance is remarkable. Partly because of Special Olympics' active promotion of physical education and advocating its necessity, physical education was made a mandated service in Public Law 94-142.

Thank you, Mr. Chairman, for your personal support of the Special Olympics in West Virginia.

Because of our minute-by-minute involvement with the extensive special olympics programs reaching practically every school district in the United States, we are acutely aware of the continuing inadequacy of physical education being provided mentally retarded and other handicapped children. This is directly contrary to the stated wishes of Congress.

Congress indicated its interest in physical education of handicapped children when in Public Law 94-142 it highlighted physical education in defining special education as: "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions.

Unfortunately, not a great deal is happening in schools across the United States. Physical education for handicapped individuals is being left out of school programs nationwide. In November 1979, the Kennedy Foundation sought to document the situation regarding the provision of instruction in physical education in public schools. We conducted a telephone survey of all directors of special education in State departments of education. This survey revealed:

A majority of States have no policies or standards to assure that physical education is considered in the process of placing or referring handicapped children.

A majority of States have no policies or standards to assure that physical education needs of handicapped children are properly assessed through testing procedures.

In November 1979, the Kennedy Foundation sought to document the situation that I have just described, regarding the provision of instruction in physical education in public schools. We conducted a systematic telephone survey of all directors of special education in State departments of education. This survey revealed what I have shown on this chart.

It shows, Mr. Chairman, that in the States, physical education is not included in the placement/referral process of handicapped students in 62 percent of the States.

The physical education needs of handicapped children were not being assessed through testing in 71 percent of the cases. Criteria were not established for determining when adapted physical education was needed in 81 percent of the cases. Physical education was included in the individual education programs for handicapped children in about 75 percent of the cases; that was very good.

Adapted physical education personnel are not being certified in 90 percent of the States. Now, in the United States, certification is a State and local function, and not a Federal function.

Now, we found that in 64 percent of the cases, there was no physical educator on the committee which this committee established in each State, the comprehensive system on personnel development committee; so we did not have any physical educators guiding the planning and implementation of the law in the States.

The States, in 73 percent of the cases were monitoring physical education; this is, of course, a good result.

So I think those results are fairly dramatic, Mr. Chairman.

Senator **Randolph**. Yes. We will ask that the chart be a part of our hearing record.

General **Montague**. We do have that with the testimony.

Now, I contend that the survey supports my statement that physical education for handicapped individuals is being left out of school programs nationwide.

We recommend that: One, Congress reemphasize its mandate regarding physical education; two, that the Department of Education insure that State department directors of special education make an increased effort to carry out the letter and spirit of the law; that the Department of Education emphasize the need for more training programs to prepare teachers to provide appropriate physical education for handicapped children, and finally, that the Department of Education recognize exemplary programs which are successfully implementing the physical education requirements of the law and use them as models.

Before I leave, I would like to introduce, Mr. Chairman, Bill Bagshaw, a 17-year-old handicapped student from Alexandria Developmental Center, who will describe what physical education and sports training and competition gained through the Special Olympics has meant to him.

Mr. **Bagshaw**. Good morning, Mr. Chairman.

I have been in the Special Olympics for 8 years. I have learned to throw a softball, to jump, to run fast, and to bowl. This year, I was in the standing long jump; I jumped 1 meter, 60 centimeters. I ran the 50-meter dash at 11.2 seconds. I went to the bowling tournament. My bowling average is 89.

I have gone to the Virginia State Special Olympics 2 years in a row. This year, I won two bronze medals. I went to Special Olympics training camp. I learned to hit the tennis ball with a tennis racquet.

I like Special Olympics. I like bowling very much. I feel good. When I win, I can show people how good I am in sports.

Senator **Randolph**. Thank you very much, Bill. I think you are wearing a medal or two, aren't you?

Mr. **Bagshaw**. Yes.

Senator **Randolph**. That is good. What do you roll, duckpins or tenpins?

Mr. **Bagshaw**. Tenpins.

Senator **Randolph**. You know, in my days of bowling, it was more duckpins than tenpins, but you never see duckpins around anymore. I do not know the reason. I guess people are stronger now and can handle that tenpin. You can be a little more accurate sometimes in duckpins.

Mr. **Bagshaw**. Yes.

Senator **Randolph**. We are happy to have you.

General **Montague**. Thank you, Mr. Chairman.

Senator **Randolph**. Now, we will give you some questions in writing. Your responses will be made a part of the record.

[The prepared statement of General Montague and the chart and questions with responses follow:]

TESTIMONY OF

ROBERT M. MONTAGUE, JR., BRIG. GEN. USA (RET.)

EXECUTIVE DIRECTOR

THE JOSEPH P. KENNEDY, JR. FOUNDATION

AND

SPECIAL OLYMPICS, INC.

BEFORE

THE SUBCOMMITTEE ON THE HANDICAPPED

OF

THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE

WITH RESPECT TO OVERSIGHT HEARINGS ON

THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

Mr. Chairman and members of the Subcommitee, I am pleased that I have been invited to testify on the physical education aspects of PL 94-142, the Education for All Handicapped Children Act.

This Subcommittee has been a major force in improving and expanding physical education, as one component of full education, for handicapped children. At the urging of the Joseph P. Kennedy, Jr. Foundation and many other organizations and individuals, the Subcommittee saw that physical education for all handicapped children was mandated by PL 94-142.

As I will report in a moment, that Congressional mandate is not being carried out effectively and properly.

But first, let me establish the credentials of the two organizations of which I am pleased and honored to be a part--the Joseph P. Kennedy, Jr. Foundation and Special Olympics, Inc.

In the early 1960's, complementing President John F. Kennedy's emphasis on physical fitness of all Americans, and especially children, the Kennedy Foundation, whose efforts concentrate on helping mentally retarded individuals, focused a great deal of its attention on physical fitness and physical education of mentally retarded children. The Foundation learned through its research and research and study by others that appropriate physical education benefitted the physical growth, self-concept and even intellectual development of mentally retarded and other handicapped children. The Foundation also discovered that pitifully few handicapped children were receiving adequate physical education in schools.

The Kennedy Foundation responded to this unfortunate and unfair condition, by creating in 1968 Special Olympics--a program offering year-round physical fitness and sports training and athletic competition to mentally retarded children and adults as well. Through Special Olympics, the Foundation wanted to do more than provide opportunities to participate in physical fitness and sports training; it hoped to educate the public about mental retardation and to get public support for programs and legislation such as the Education for All Handicapped Act. We believe that we have been quite successful.

For example, the success of Special Olympics is shown by the following:

- There are now more than 1 million participants.
- 97% of counties of U.S. have Special Olympics programs.
- More than 20,000 Special Olympics events take place each year.
- Over 350,000 volunteers supply the manpower.
- Public awareness is very high; public acceptance is remarkable.
- Partly because of Special Olympics' active promotion of physical education and advocating its necessity, physical education was made a mandated service in PL 94-142.

Because of our minute-by-minute involvement with the extensive Special Olympics programs reaching practically every school district in the U.S., we are acutely aware of the continuing inadequacy of physical education being provided mentally retarded and other handicapped children. This is directly contrary to the stated wishes of Congress.

Congress indicated its interest in physical education of handicapped children when in PL 94-142 it highlighted physical education in defining special education as:

> "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions.

Unfortunately, not a great deal is happening in schools across the U.S. Physical education for handicapped individuals is being left out of school programs nationwide. In November, 1979, the Kennedy Foundation sought to document the situation regarding the provision of instruction in physical education in public schools. We conducted a telephone survey of all Directors of Special Education in State Departments of Education. This survey revealed:

- A majority of states have no policies or standards to assure that physical education is considered in the process of placing or referring handicapped children.
- A majority of states have no policies or standards to assure that physical education needs of handicapped children are properly assessed through testing procedures.

- A great majority of states have no criteria for determining if a handicapped student needs adapted physical education.
- A majority of states do have policies or standards to assure that physical education is included on handicapped students IEP's, although the responses to the first 3 questions indicate no policy for determining a handicapped child's physical education needs.
- A great majority of state have no certification requirements in adapted physical education.
- A majority of states have no physical educator represented on the state's Comprehensive System of Personnel Development (CSPD) Committee.
- Although a majority of states say that they monitor physical education, the responses to the previous questions leave much speculation as to what they in fact do monitor.

Note: Chart attached showing detailed results of the survey.

I contend that the survey supports my statement that physical education for handicapped individuals is being left out of school programs nationwide.

Since the survey results show, as of November, that Congress' mandate regarding the inclusion of physical education in the overall education of handicapped children is not being followed, we recommend that:

- Congress reemphasize its mandate regarding physical education.
- The Department of Education insure that State Department Directors of Special Education make an increased effort to carry out the letter and spirit of the law.
- The Department of Education emphasize the need for more training programs to prepare teachers to provide appropriate physical education for handicapped children.
- The Department of Education recognize exemplary programs which are successfully implementing the physical education requirements of the law and use them as models.

Thank you for inviting me.

I would like to introduce Bill Bagshaw, a 17-year old handicapped student from Alexandria Developmental Center who will describe what physical fitness and sports training and competition, gained through Special Olympics, has meant to him.

ABSTRACT

Congress indicated its interest in physical education of handicapped children when in PL 94-142 it highlighted physical education in defining special education as:

> "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions.

Unfortunately, not a great deal is happening in schools across the U.S. Physical education for handicapped individuals is being left out of school programs nationwide. In November, 1979, the Kennedy Foundation sought to document the situation regarding the provision of instruction in physical education in public schools. We conducted a telephone survey of all Directors of Special Education in State Departments of Education. (Please see attached chart.)

Since the survey results show, as of November, that Congress' mandate regarding the inclusion of physical education in the overall education of handicapped children is not being followed, we recommend that:

- Congress reemphasize its mandate regarding physical education.
- The Department of Education insure that State Department Directors of Special Education make an increased effort to carry out the letter and spirit of the law.
- The Department of Education emphasize the need for more training programs to prepare teachers to provide appropriate physical education for handicapped children.
- The Department of Education recognize exemplary programs which are successfully implementing the physical education requirements of the law and use them as models.

ATTACHMENT

PL 94-142 TELEPHONE SURVEY RESULTS

THIS CHART REPRESENTS CURRENT POLICIES OR STANDARDS REGARDING PHYSICAL EDUCATION AND THE HANDICAPPED AMONG ALL STATES.

QUESTION	YES	NO
IS PHYSICAL EDUCATION INCLUDED IN PLACEMENT/REFERRAL PROCESS?	37%	62%
ARE PHYSICAL EDUCATION NEEDS OF HANDICAPPED CHILDREN ASSESSED THROUGH TESTING?	26%	71%
ARE CRITERIA ESTABLISHED FOR DETERMINING WHEN ADAPTED PHYSICAL EDUCATION IS NEEDED?	18%	81%
IS PHYSICAL EDUCATION INCLUDED ON IEP'S?	75%	24%
ARE ADAPTED PHYSICAL EDUCATION PERSONNEL CERTIFIED?	9%	90%
IS A PHYSICAL EDUCATOR REPRESENTED ON CSPD COMMITTEE?	28%	64%
DO YOU MONITOR PHYSICAL EDUCATION?	73%	24%

All percentages do not total 100% since some states did not respond to all items.

AUG 25 1980

SPECIAL OLYMPICS, INC.
International and National Headquarters
1701 K St. N.W., Suite 203, Washington, D.C. 20006 (202) 331-1346

August 21, 1980

8-25-80
Subcommittee on
The Handicapped

The Honorable Jennings Randolph
Chairman
Subcommittee on the Handicapped
United States Senate
Committee on Labor and Human Resources
Washington, D.C. 20510

Dear Senator Randolph:

Thank you for inviting me to testify during the oversight hearings on Public Law 94-142, a most significant law affecting the lives of millions of handicapped children and their families and friends.

I am pleased to provide the attached brief responses to your questions. The Kennedy Foundation and Special Olympics, Inc. are prepared to assist you and the Committee in improving implementation of Public Law 94-142.

Sincerely,

Robert M. Montague, Jr.

Robert M. Montague, Jr.
Executive Direction

RMM/klc
Encl.

SPECIAL OLYMPICS, INC.
Eunice Kennedy Shriver, President
Robert M. Montague, Brig. Gen. U.S.A. (Ret.), Executive Director
Thomas B. Songster, Phd. Director of Sports and Recreation
Stanley Stortzell, Director of Coaching and Training
Created and sponsored by The Joseph P. Kennedy Jr. Foundation

Question

1. What criteria would you suggest be developed to help implement physical education for handicapped children?

Response

To cause states, school districts and schools to provide mandated and necessary physical education to handicapped children will require, in my opinion, a long-term and intense effort by the Department of Education. First, the Department should reiterate the requirement for physical education to be part of each handicapped child's IEP. This necessitates that the Department stress that physical education be considered during the referral process and that physical education needs to be a specific part of any assessment. Second, the Department, in its contacts with the states, should provide information and assistance regarding adapted physical education curricula and stress the great need for inservice training of physical educators and teachers. Third, the Department should require the states to monitor and report on the extent to which handicapped children are receiving appropriate physical education.

Question

2. Would you please comment on the availability and appropriateness of physical education for handicapped youth at the secondary education level?

Response

The testimony I presented lumped primary and secondary education together. Hence, I cannot respond specifically to the question of availability of physical education at the secondary education level. However, based on our experience in Special Olympics, it appears that the physical education for handicapped students in secondary schools is even less available than for handicapped students in primary schools. Yet, physical educators point out that for handicapped children, whose maturation is usually slower than for normal children, physical education is especially important to those of secondary school age.

Senator RANDOLPH. Are there any other comments? Yes, Mr. Wheeler?

Mr. WHEELER. Yes, Mr. Chairman. On the survey, I think it is important to point out that these were State policies. Many States did not have any State policies concerning the referral and screening process. The same is true with the assessment process. But the States did say that physical education was included in the IEP. If the States have no screening, referral, or assessment process, how could they determine the physical education needs of the child to be written in the IEP?

There is another questionable response concerning monitoring. Although 75 percent of the States were monitoring the physical education, the responses to the previous questions left much speculation as to what in fact to monitor. I think these points needed to be clarified and are found in the testimony.

Senator RANDOLPH. We will bring these needs to the attention of Dr. Martin, of the Department of Education. Thank you very much.

We thank the entire group for your appearance.

Now, will the panel members—four in number, I believe—come to the witness table: Mrs. Weber, Mr. Akerley, Mrs. Crawford, and Ms. Mendelsohn.

Mr. Akerley, would you begin for the panelists, or however you would desire?

STATEMENTS OF EDWARD M. AKERLEY, REPRESENTING THE NATIONAL SOCIETY FOR AUTISTIC CHILDREN, ACCOMPANIED BY MARY S. AKERLEY, MRS. DORIS WEBER, PARENT, NATIONAL GOVERNMENT ACTIVITIES COMMITTEE, KANSAS CITY, MO., REPRESENTING UNITED CEREBRAL PALSY, ACCOMPANIED BY KATHY ROY, ASSISTANT DIRECTOR, UCPA GOVERNMENTAL ACTIVITIES OFFICE; DOROTHY CRAWFORD, BOARD OF DIRECTORS, SCOTTSDALE, ARIZ., REPRESENTING ASSOCIATION FOR CHILDREN WITH LEARNING DISABILITIES; AND JACQUELINE Z. MENDELSOHN, SILVER SPRING, MD., REPRESENTING INTERNATIONAL ASSOCIATION OF PARENTS OF THE DEAF, A PANEL

Mrs. **Akerley**. Thank you, Mr. Chairman.

I am not our witness today—this is a very proud moment for me—our son is. But I would like to introduce him if I may, because I think some knowledge of his background will make his testimony more meaningful for you.

Senator **Randolph**. Just to interrupt, we are delighted that you are here, and if you will take over at this moment, then we will move into the testimony. Thank you.

Mrs. **Akerley**. Thank you.

Until Ed was 3, his only mode of communication was screaming. Until he was 5, he fled in wordless, uncomprehending terror from such gentle things as raindrops and small animals. He did not play with toys like other children until he was 7. His behavior in public was unpredictable and frequently embarrassing.

In short, in less enlightened times, he would most likely have to have been institutionalized.

He has had a lot of help—medical, social, educational. And my husband and I believe the last was the most significant. His first 7 years of school were in private, segregated, special education programs, but all publicly-funded, because we live in Maryland, and we had a law that mandated comprehensive services even before 94-142. I believe that kind of intensive help was essential, just as is now the opportunity for him to be in a less restrictive and more normal setting: a program for students with learning disabilities in our neighborhood public school.

The decision to move to public school was his own, and he was right. His courage and his persistence, even when things did not go smoothly, tell us something about the importance of letting people take risks in order to grow.

His statement is reproduced, exactly as he wrote it, in our written testimony, and we request that the whole document be made part of the record. You will see that the child who once could not hold a pencil now writes very legibly; who once would not put two words together intelligibly now produces pages of coherent narrative; and who once could not bear unfamiliar surroundings has taught himself to use public transportation. In fact, when we leave here today, I will go to my office, and he will take Metro home on his own.

We are really pleased to have this opportunity today to present to you one of the young people whom you and this legislation have helped so much, my son Edward.

Mr. **Akerley**. Mr. Chairman, my name is Ed Akerley. I am 15 years old. I live in Silver Spring, Md. I have autism.

I went to Hillcrest when I was 3. Sometimes, I used to run away after eating lunch. Sometimes, I got into serious trouble for that. Also, I used to beat up the kids over there, which was bad, and when I did a bad thing again, sometimes Mr. Stoddard, my teacher, pinned me to the floor. I screamed and cried while being pinned. I did not like being pinned at all.

Once, when I had art, I ran off. When I came back, the teacher said, "Do not leave the art room." Much later, I was still there, and someone said, "Why are you still sitting in the art room?"

Then, I switched to Christ Child School. First, I was in group 1, then in group 4, where Tammy was in my class. Sometimes, I had Tammy chasing me around the playground, which was having fun. Sometimes, we went on some field trips. One day, we went to Washington, D.C., and I went to the top of the Washington Monument with my class.

One day, I wanted to go to public school to be with normal kids and do what the normal ones did. Then I told Mom I wanted to walk or ride a bus to school and not in our car anymore.

I had a talk with my teacher, John Marston, about going to a new school to be with normal kids. Marty, my other teacher, heard about it, too. When John had a talk with the principal, Burt Lones, about me leaving Christ Child, Burt wanted me to come back after summer vacation, so I had to go back to Christ Child for a while, for Burt to see if I was ready. Then, by close to Christmas, I was a new boy at Dennis Avenue School. At first, I went to Christ Child in the afternoon. Later, I stayed the full day. My teacher was Mrs. Siegel. A boy named Eric had so much trouble learning when he was mad, sometimes it cracked me up, making me laugh. I tried not to laugh and tried to be more normal, even if it was a joke about Eric. Then, next year, I was in Mrs. Kugler's class. At the beginning of the year, Jean Edeson teased me, which I did not like. Chris and Jerome were in my class. Nathaniel was there in the beginning only because he was having trouble being good. So it was lots of fun in the class. Our teacher gave us Winnie the Pooh coloring books. They were more like fun. I did work first, then when it was finished, I colored Winnie the Pooh. It was my favorite, because I was young.

I took Hot Wheel cars to school to play when work was done. Sometimes, I even used to read Curious George books to Chris. Sometimes, they picked on me a little bit.

Then, when there were not enough students, I had to switch to Forest Grove School, so I worked hard the next year. Miss Burroughs was my teacher. I was teased before then they acted nice to me. I was in the Halloween parade, and I dressed up like a girl. So I liked the kids at school.

Sometimes, I had speech. I liked that, too. By the end of September, I went to Marlu Ridge with the sixth graders and the kids from Four Corners School. I had a good time except for being teased by some kids, which I did not like. Maybe they thought they were more important.

I knew a girl named Michelle Osborn. She had long hair; that is why I thought she was good looking.

Next year, I stayed there for one more year. Sometimes, that last year at school, I got picked on again, so when Mom heard of it, she said, "Do you want to go back to private school?" I said, "No. Maybe the kids do that to make themselves feel more important." So I worked hard every day.

One day, Mom took me to two junior high schools, Eastern and Key. Then, when school was out, I picked Eastern because I thought it would be the best. So in the summer, I had orientation for 4 days at the new school. I liked it a lot, because it has nice special eds.

When I was in seventh grade, I had trouble with geography, because it was a little bit hard. I got a failure notice that I did poorly. I had to study more.

After having art with Mr. Fierstein, I went to Home Ec. In the sewing class, there was too much confusion. I was being teased by two boys, hitting me on the head with pencils. So Mr. Hedderman finally pulled me out of there, and I went back to having art with Mr. Fierstein. Back in the art class, there was no teasing. After art, I again went back to sewing. Then there was no teasing. A girl in my sewing class was nice to me by helping me thread the machine and do my sewing. Her name is Terri Gala.

Those two boys that caused the trouble should have got pulled out of there. Their names are Kevin and Timmy. I was not bad, they were. I should have stayed in that class. I was not trying to cause trouble in sewing.

Mostly in my work, I did pretty good, which Mr. Hedderman said. This year, I finished eighth grade. I have music first period; and second, I work on two pages in phonics and some days, language. At third, I have gym; at fourth, I have science, about land animals. Then I have lunch. After lunch, I have math. After math, I have reading. After reading, I have geography. After geography, I went home when the bell rang. I still ride the bus to school.

Senator RANDOLPH. Thank you very much, Edward. This is very much a human document to me, and I am intensely interested in what you were saying. If I might say, I taught speech for many, many years, and I found that you were able, in the reading of your testimony, to give the appropriate inflection and emphasis. Whether you realized you were doing it or not, you were bringing out the points in a way that the listener could understand.

This will, of course, be made part of the record, and we will ask questions in writing for your response.

Will that be agreeable?

Mr. AKERLEY. I guess so.

Mr. RANDOLPH. We will try it, then.

[The joint prepared statement of Mr. and Mrs. Akerley and the question and response follows:]

STATEMENT
OF
THE NATIONAL SOCIETY FOR AUTISTIC CHILDREN
ON
PUBLIC LAW 94-142

SUBMITTED TO
THE SUBCOMMITTEE ON HANDICAPPED
COMMITTEE ON LABOR AND HUMAN RESOURCES

UNITED STATES SENATE
JULY 29, 1980

Witness:

Edward M. Akerley
10609 Glenwild Road
Silver Spring, Maryland 20901

Accompanied by:

Mary S. Akerley

SUMMARY

The statement of the National Society for Autistic Children is addressed to two problems in the implementation of P.L 94-142:

1) Placement There is evidence that children are being placed in classes according to their diagnostic labels rather than according to individual evaluations of learning strengths and deficits and specific educational needs. This appears to be the result of misunderstanding of the law and its requirements, administrative inertia, and lack of resources.

2) Mainstreaming This concept is misapplied and misunderstood. Moreover, regular education teachers are not being given sufficient preparation for accommodating students with disabilities. Finally, the preferences of the students themselves are not being given sufficient weight when placement decisions are made.

NSAC's recommendations are addressed entirely to modifications in implementation. No changes in the law itself are suggested. The Society's points are illustrated by its witness's first-person account of his own experiences, first in segregated special settings, then in special classes in neighborhood public schools.

ABOUT SCHOOL

I went to Hillcrest when I was three. Sometimes, I used to run away after eating lunch, Sometimes I got into Serious trouble for that. also, I used to beet up the kids over there which was bad, when I did a bad thing agian, Sometimes, Mr. Stoddard pinned me to the floor, I screamed & cried when being pinned I did not like being pinned at all, I had art before, then once I ran off then came back, Then the teacher said do not leave the art room, then I waited later I was still there Someone said Why are you sitting in the art room? Afer I Was at Hillcrest, then I switched to Christ Child. I was in group 1, then after a few days I went into group 4 When Tommy was in my Class [illegible] I was on the play-ground with my Class, Sometimes, I had Tommy chasing Me around the play-ground which I was having fun being Chased. Sometimes we went on some field trips to Washington, one day [illegible] I went to to the top of the Washington Monumer [illegible] on the last day Michelle and Tom [illegible]. Then John & Susan were My teachers after Susan, I had Marty for a Teacher. One day I wanted to go to a public School to be with Normal Kids & do what the Normal [illegible]

Before I switched to a public School, Some times I had Therapy, with Mrs. West then Mrs. Eerstein I had a talk with John Marston about going to a new School to be with normal Kids. Marty has heard about it too. When I was still at Christ Child after recess I watch the Electric Company. When John had a talk with Birt Lones about me Leaving Christ Child. Birt wanted me to come back after a Summer Vacation. So I had to go back to Christ Child for a while for Birt to see if I was ready then by Close to Christmas I was a new boy at Dennis Avenue School, On some days when I was at Dennis Avenue for half, I went to Christ Child for the Afternoon. Sometimes I stayed a full day. Mrs. Siegel was my teacher. A boy named Eric Who had So much trouble learning when he was mad, Sometimes it cracked me up of Making Me laugh. I tried not to laugh and tried to be more normal even if it [illegible] about Eric. Then next year I was in Mrs. Kugler Class. At the beginning of the year Jean Edeson teased [illegible] I [illegible] Chris and Jeremy were in my Class. Nathaniel was in my the beginning only because he was having trouble being good. so it was lot's of fun in the class, So our teacher gave us Winnie the Pooh Coloring books, they were more like fun. I did work first then when it was finished I colored in my Winnie the Pooh Book, Winnie the Pooh was My favorite one because I was young. So I Made up about Pooh in a race car I took Some hot Wheels cars to school before to play when Work Was done. Some times then I even used to read Cirious George to Chris then. Sometime they picked on me a little bit.

Then when there were not enough students. So we had Switched to Forest Grove. So I worked hard the next year. Miss Burroughs was my teacher. I was teased before then they acted nice to me. Then at school at Holloween parade I was dressed up like a girl wearing lipstick and one of my sisters dresses. So I liked the kids at School. later befor Christmas My teacher got Married to a man named Mr. Shamp So then My teacher had her last name changed to Shamp. And Sometimes I had Speech before so I liked it. By the end of September I went to Mar lu ridge with the six grader with Four Corners School kids too. I had a good time except being teased by some kids which I did not like Maybe that they thought they were more impartant. I new a girl named Michelle Osborn. She had long hair thats why I through She was good looking. Next year I stayed there for one more year. Sometimes that lest year at School I got picked on again, so when mom heard of it. She said do you want to go back to a private School? I Said no. Maybe the kids made themselves feel more important. So I worked hard every day. One day mom took me to two Junior High Schools. Then She TOOK Me to Eastin Then she took me to Key. Then When before [illegible] I picked Eastin because I thought it will be the best. So in Summer I had Orientation for four days at the New School. I like it a lot because it has nice Special-Eds. When I was in Seventh grade I had trouble with Geograph

When I had trouble with Geography because it was a little hard. I got a failure notice that I did poorly, I had to study more. After havin Art with Mr. Fierstein, I went to Hom eck. In the Sewing Class there was too Much Confusior I was being teased by two boys taping hitting me on my head with pencils. So Mr. Hedderman final I pulled me out of there. So I went back to havin art with Mr. Fierstein. Back in the art class ther Was no teasing. After art again I went back to Sewing. Then there was no teasing. A girl in my Sewing class was nice to me by helping me thread the Machine and doing My Sewing. Her name is Terri Gala. I Made a pencil case and a gym bag. After Sewing I had cooking. Mrs. Avey was our teacher then. I am good friends with Terri, Gala. About those two boys who Caused the trouble should hav got pulled out of there. Their names are Kevin a Timmy. I was not bad, they were. I should have Stayed in that class. I was not trying to make trouble in Sewing. Mostly in My work I did pretty good Which Mr. Hedderman Said. By the next year I went to eight grade. I have Music 1st Period and Second I work on two pages in phonics and [illegible] ings. language. At third I have Gym. At fourth I have scienc about Land Animals. Then I have lunch. After lunch I have math. After math I have reading. After reading I have Geography. After Geography I go home When the bell rings. I ride a bus to School now I still.

Mr. Chairman and Members of the Subcommittee:

My name is Mary Akerley. I am a past president of the National Society for Autistic Children and have served as the staff director of the Society's National Affairs Department. Our witness today is my son, whose remarks will illustrate how P.L. 94-142 can work it if is sensitively implemented.

I am introducing him because I think some knowledge of his background will make his testimony more meaningful for you. Until he was three, his only mode of communication was screaming; until he was five, he fled in wordless, uncomprehending terror from such gentle things as raindrops and small animals; he did not play with toys like other children until he was seven; his behavior in public was unpredictable and frequently embarrassing - in short, in less enlightened times, he would most likely have had to be institutionalized. He has had lots of help - medical, social, educational; my husband and I believe the last was the most significant. His first seven years of school were in private programs, all publicly funded. (Maryland had comprehensive services even before the passage of P.L. 94-142.) I believe this kind of intensive help was absolutely essential, just as is the opportunity for him now to be in a less restrictive setting: a program for students with learning disabilities in our neighborhood public school.

The decision to move to public school was his, and he was right. His courage and persistence, even when things did not go smoothly, tell us something about the importance of letting people take risks in order to grow. His statement is reproduced exactly as he wrote it in our written testimony, which we request be made part of the record. You will see that the child who once couldn't hold a pencil now writes very legibly, who once couldn't put two words together intelligibly now produces pages of coherent narrative, who once could not bear unfamiliar surroundings has taught himself to use public transportation.

We are pleased to have this opportunity today to present to you one of the young people whom you have helped so much. Ed Akerley's story is the strongest statement we can make in support of P.L. 94-142. It is a good law; it is not always well implemented. Our formal statement will focus on two areas where, at least for youngsters with autism, most problems seem to occur.

PLACEMENT In spite of the law's clear statement that placement is to be based on the child's IEP, there is heavy reliance on diagnostic labels rather than on individual needs. This is particularly damaging for students with autism because of the still prevalent misconception that autism is an emotional disorder. The problem is compounded when a state or school district relies on canned programming for the sake of expediency. It is easier to place a child into an already existing program, based on a diagnostic label, than it is to program for him individually. The results for autistic children are often disastrous - and completely contrary to the intent of the law.

Most classes for children with emotional handicaps are based on the belief that the students are normal learners whose psychological, usually environmentally induced, problems interfere with their behavior to such an extent that real learning cannot occur. The usual intervention is therefore primarily psychiatric in orientation: psychotherapy, a supportive millieu, an often permissive approach to "acting out." Not only are such techniques totally ineffective for the autistic child, but they can be actually harmful.

Autism could be regarded, at least for educational purposes, as the direct opposite of emotional disturbance. Autistic children cannot learn in any normal fashion; and it is this inability to learn which causes their deviant behavior, not the other way around. Consequently, they require a program which utilizes specialized educational strategies (such as task analysis) in a highly structured setting. The psychotherapeutic approach has been proven ineffective by several studies; the reason has become increasingly obvious as medical research has identified several areas of neurological dysfunction underlying the disorder. However, the National Society for Autistic Children files contain ample evidence that students with autism are being placed in classes for emotionally handicapped students. Although the parents appeal such decisions, they are not always successful; school authorities cite the regulation and past practice, outdated though that may be. Even when it becomes obvious that the placement is actually harming the child, the authorities do not relent; instead they find ways to punish the parents for being troublesome.

Joseph, 11 and severely autistic, lives with his parents in a southern Virginia city, where he has attended several day programs. The most successful was one designed for mentally retarded children (i.e., the accommodation was to learning rather than psychiatric problems). The time did come when the teacher felt that in order to keep Joseph in her class, she would need additional help. Joseph was evaluated and the recommended placement was a special program for autistic children based on the old psychiatric model, the only such one was residential, and some distance from the family home. Nevertheless, the parents consented to a trial placement. Joseph regressed and the parents took him home. They were told that the only possible day placement was a class for emotionally handicapped children; once again they were willing to try. And once again Joseph regressed. But this time was worse; there were personality changes as well. The once docile, happy child had become hostile and aggressive. When Joseph's mother visited the classroom everything seemed fine (she could only visit on a prearranged basis), but finally a teacher's aide gave her the clue she needed: Joseph was routinely chained to a chair. Mrs. S. quite rightly felt her son would be better off with no program and decided to keep him at home. The state promptly charged her with violating the law. It insisted Joseph needed residential care; she maintained he did not, only an appropriate day program. The battle dragged on for over a year. The family finally won but only after hiring a lawyer and forcing the former Bureau of Education for the Handicapped (BEH), now the Office of Special Education, to investigate. Huge sums of money and nearly three years of a human life have been wasted in the process, where, ironically, the family was asking for a program (the MR class with an additional teacher or aide) which cost far less than either of the two totally inappropriate ones the state attempted to force on them.

Three years ago, Andrew, then six, was making good progress in a special public program in Michigan. It was designed for autistic children and included such appropriate related services as speech therapy. Last year the therapy was dropped when the therapist became ill; the school system refused to replace her, and Andrew's parents were forced to provide this service themselves at considerable personal expense. At the end of the school year the officials decided to discontinue the autistic program entirely and place Andrew in a traditional E.I. (Emotionally Impaired) classroom. The parents immediately requested a hearing and were finally forced to hire an attorney to overcome the school's delaying tactics. When a decision was finally handed down six months later in favor of Andrew's earlier type program, it and the results of a recent evaluation were ignored. Instead Andrew was given a "trial placement" in the E.I. class. He began showing medical symptoms of stress; he stopped eating and developed a heart murmur. Faced with a program that was not only educationally inappropriate but actually life-threatening, Andrew's parents kept him home. The school system has consistently thwarted their attempts to obtain due process but has sued them for truancy!

The Office of Special Education has recognized this problem and is planning to move autism out of the "Seriously Emtionally Disturbed" category in the regulations. We believe this will help tremendously, in that it will remove formal justification for such placements. However, what we have just described is symptomatic of the larger problem of placing children solely on the basis of diagnostic labels. We suspect that this happens because of misunderstandings, inertia and budgetary difficulties at the implementation level. For example, last December the Office of Special Education issued a memo of clarification on the regulations: the categorization of children by handicap was solely for the purposes of the required child count and was *not* to be used for programming. We published this information in our national newsletter. This was apparently the only source of that information to some public school professionals; we received inquiries from staff persons in two states because they could not get information from their education officials.

Clearly, funding is another major impediment to full and proper implementation. The promise of federal assistance to meet individual needs has been only partially kept. It is, therefore, somewhat unfair to criticize states and LEAs for only partial performance. For example, states were lead to believe that they would receive approximately $3 billion in federal assistance in 1982 for the state grant component of 94-142. It is a disappointment that the Administration's request for FY 1982 is only $922 million, and that past Congressional appropriations have fallen far short of the authorized amount.

MAINSTREAMING This term has become a sort of verbal Rubicon, separating good guys from bad. Of course, which is which depends entirely on individual bias; because mainstreaming *per se* is neither a panacea nor a lethal weapon.

We listened attentively to witnesses at the Senate Oversight Hearings last summer. Their conflicting views on mainstreaming, as parents and as teachers, indicated that both the concept itself and its application under P.L. 94-142 are still misunderstood. Ed Akerley's statement does highlight the mainstreaming dilemma and also suggests a solution, one which is actually written into the law but not always enforced.

P.L. 94-142 requires that the parents and, where appropriate, the handicapped student participate in the formulating of the IEP. One of the decisions which has to be made is that of placement. And here it is very, very important that the student's preferences be taken into account.

When Ed indicated he had enough of private school, that he wanted to be with normal children, the learned professionals in the Montgomery County School System went into a state close to panic. Everything from the larger classes to riding the school bus was going to be "traumatic." If he and his parents insisted on a public school placement it would have to be in an EH Classroom with psychotherapy - on the outside and naturally, at the family's expense. Fortunately, the family had identified an LD Class in a nearby school with a vacancy and a willingness to try. The school system compromised with "half-hearted" mainstreaming: gradual introduction to public school. So, for nearly four months, Ed Akerley had to go to two schools every day, the worst possible arrangement for a child whose educational handicap demands consistency in management. Nonetheless, as you saw today, he has survived - "thrived" might be a better word. Now "mainstreamed," he has told you of his problems - nearly all social - and of his still strong preference, in spite of them, for the most normal environment. He, more than any of the "decision-makers" in his world, knows the reality of public and private school and which is now best for him. There are other Eds who are not listened to; they are ignored and their parents' "participation" in the IEP is limited to signing an already completed form. If professional pre-set opinions on who can and cannot be mainstreamed are allowed to prevail, we may as well drop the "I" from IEP. If students and their families are listened to and their recommendations followed, there will, of course, be mistakes made; just as there are when "experts" make all the decisions. But they will be normal errors based on normal desires to grow, with the risk-taking that requires, not artificial traps based on someone else's limited expectations for another human being.

We must also deal with teachers' fears that they cannot handle handicapped children in their classrooms. Some of that fear is legitimate; the one great flaw in P.L. 94-142 is its lack of provision for training of regular classroom teachers and of support personnel. Even when a teacher is willing to try, he/she must be taught what to expect, what are realistic goals. One young teacher, after completing her first year with an autistic child in her classroom, and doing a very good job, had to be consoled by the student's mother when she indicated she felt she had failed because the child still wasn't behaving or learning normally.

One of the Senate witnesses described her deaf child's public school experience as "the most restrictive environment possible." In his "deaf school" all the children signed and his world, although silent, was essentially normal. In "normal" school he was isolated by his deafness. Does this mean he should not have been mainstreamed? Or does it mean the school personnel and his classmates should have been taught to sign? This was how placement of a deaf girl was managed in a Northern Virginia public school. Her classmates thoroughly enjoyed the experience and carried it over to junior high school, where the young lady's mainstreaming successfully continues.

We hesitate to suggest amendments to the law as solutions to the problems we have discussed. We agree that "Hard cases make bad law." We do believe that enforcement must be more rigorous, and that rigorous enforcement will eventually lead to acceptance of the principles on which the law is based. Until that happens, we must find no excuse acceptable for compromising the right of every child to appropriate education in the least restrictive environment.

QUESTION FOR ED AKERLEY

1980 AUG 18 PM 2:00

1. What plans have you made to continue your education and training beyond high school?

When I finish High School , I want to go to a training school to get some good jobs . Fixing street lights in an orange snorkel truck , Being a milk man , Making sodas, Being a trash man. When I have a good job, I want to buy a house, get married and have some children. When I have my own house I want a vegetable garden in my backyard , Some cats and a dog. First I will live in an apartment with my wife. When my wife goes to the hospital to have a baby , then I want to start buying my house. I will be living in Arizona by then. I willw want to know how to drive a car and a truck.

Mrs. Mary Akerley
10609 Glenwild Rd., Silver Spring, Md. 20901
NATIONAL SOCIETY FOR AUTISTIC CHILDREN

Senator **Randolph**. Doris Weber, parent, from Kansas City, Mo. It has been hot out there, hasn't it?

Mrs. **Weber**. Yes, sir.

Senator **Randolph**. Pull the mike closer, that our guests might hear you.

Mrs. **Weber**. Thank you, Mr. Chairman.

I would also like to introduce Kathy Roy, of the National UCPA Governmental Activities Office.

I am the parent of eight children, three of whom are classified as "developmentally disabled." My testimony is the result of many years of experience of attempting to obtain an appropriate education for those three children, and as the result of an involvement with the protection and advocacy system in our State, the various boards and committees for United Cerebral Palsy, and a parent advisory council that was formed with the local school district.

Our experiences over the years have been varied, from good to bad, as is true with most parents in attempting to get their children introduced into a school system of any kind.

My other children were fortunate enough to be able to attend private schools, but because of the types of handicaps of my three younger children, they were not able to take advantage of that system, so we introduced them to the public school system.

I am not sure who introduced whom to what, except that I know that my children discovered that school personnel did not always receive them with open arms; that oftentimes, the school personnel and the other students did not understand what a disability was or were able to discern between the different disabilities, and that occasionally—a little too often—their peers were cruel.

Over the years, I have seen some of these circumstances change. I have some very great concerns. My first concern is that the school systems are still not alerting the parents as to the implications of Public Law 94-142. I know this is true from sitting on a parent advisory council and on the initial visits with them, learned that most of them had fought to get their children in school without even being aware that the law existed. We have a gap somewhere.

I am sure that school administrators are leery of educating some of these parents too fully, probably figuring that there is going to be a marching band walking into their offices, demanding more than what they feel they can accomplish. I do not believe that is true, but I would hope that more school districts would begin to implement some parent training or more surrogate parent training.

The next thing that I am concerned about is that we are lacking awareness training both with the students and the teachers. As a result of insensitivity, my daugher, who is 15, whose name is Bernadette, had her hair set on fire by her "normal" peers last October.

Senator **Randolph**. Where did this take place?

Mrs. **Weber**. On the schoolbus.

As a result of that, she psychologically was so damaged that she had to remain out of school for 2 months while the school system tried to make a decision as to what the next step would be.

Senator **Randolph**. Why did it take 2 months to make a decision?

Mrs. **Weber**. Well, it took 2 months because I was requesting some private placement for Bernadette to ease her through the trauma and also to provide a more appropriate setting for her, at least for the next year or so. They were having difficulties with purchase of service agreement at that time.

Senator **Randolph**. I do not want to be too detailed on it, but this is a very unusual case.

Mrs. **Weber**. Yes, it was to us.

Senator **Randolph**. What happened to the individual or individuals who set her hair afire?

Mrs. **Weber**. Well, it so happened that this was a youngster who, for some unknown reason, had been attending the wrong school for 2 months. They did not even realize that the youngster was attending the wrong school until the incident occurred and was reported by the bus driver, and at that point, the school records showed that he did not belong on that bus, nor did he belong in that school.

I left it up to the school administration to take care of the legalities as far as what occurred with the child, only wishing for him to obtain some assistance so that that type of thing would not occur again.

Yes, it was unusual. Thank goodness, Bernadette was not physically hurt. The fire was put out quickly. But psychologically, Bernadette would not take a bus again whether it was public transportation or school transportation, nor would she walk in the door of that public school again.

So eventually, we did obtain a purchase of service agreement with a private school.

The sad thing is that that is not necessary. The fact that her peers, her "normal" peers, saw it necessary to tease her in that sort of way means that our community as a whole, or society as a whole, has a lot to learn.

What I have learned also is that teachers are some of the most wonderful people on Earth, and they have given my children a reason to want to succeed from one day to the next. But I also find that many of them do not understand what the various disabilities are. That has been lacking in their training. We are attempting to make up for that now, through different classes that are required for these teachers. I am very anxious to someday see mainstreaming occur, but I believe my idea of mainstreaming and others may be a little different, only because I do not see every child in a normal classroom. But what I do wish to see is that every child have an opportunity to be integrated into a normal pattern of life and to receive an education to the extent that that child will feel like a whole person. I do not think that is an impossible feat.

We need to look at vocational and prevocational training to a much greater extent than we are now. My 17-year-old son, Phillip, has a great desire to work, like his five older brothers and sisters. That responsibility is not going to be his unless the school system accepts their responsibility to provide some vocational training for Phillip. More than once, the need for that has appeared on his IEP, but it has not been implemented because the school system said they really did not have the capabilities to provide the type of vocational training that I and Phillip felt was necessary for him.

In one instance, he was in a vocationally oriented class, and in mid-semester, that class was withdrawn, and Phillip was left without vocational training again.

I do not believe this is unusual. Vocational training does not seem to be a priority yet; it needs to be, because if we are going to put so much emphasis on providing an appropriate education, a well-rounded education for our youngsters in the elementary stages, via Public Law 94-142, then the natural end result is that these individuals will be able to be employed. To be employed, they need vocational education. It is a natural.

I do not believe we have looked at that as sincerely as we need to.

I feel very fortunate that my three children are still in school due to many of the circumstances that we have encountered. I know that administrators are becoming more open-minded. I know that they are not relegating our children to the far corners of the facilities now, as they were. I know that teachers' education is being expanded. And I have a hope for all three of my children for the future. Bernadette this year will be going back to school in a different school system. She will be provided with prevocational training, as well as her academics. Phillip is going to have vocational training as well as academic. And Thomas, hopefully, is going to attempt to be what many of us call "mainstreamed". He will be in a normal classroom approximately 80 percent of the time. The other 15 percent, he will be in a learning center.

This means that we are making great progress with Public Law 94-142, but it also means that we have got to look at the monitoring of the system from both a Federal and State level. I know from working with the protection and advocacy system that this has not been done, not to the extent which is necessary. The courts should not be the end result or the way to force the systems to implement this law. I would hope that, through more thorough education of our school personnel and the community at large, that we can accomplish this in a different method.

Thank you, Mr. Chairman.

Senator Randolph. Thank you very much, Doris Weber. I noted earlier that we would be joined by, and that he would be chairing the subcommittee hearing—I refer to, for our guests from Canada especially, the former governor of Vermont—Senator Stafford. I am delighted that Senator Stafford is here, and he will continue with the hearing.

May I have the privilege of saying again to the group of Parliamentarians and representative Canadians who are our guests that we know of your schedule, of course. We wish that you might be here for all of the hearing, at least, during the morning.

I just was thinking this morning, with reference to Canada, of Leonard Robinson, who was such an advocate and leader in our program for the vending facilities for the blind. I will have one or two of these books made available to you—he tells the story of the Randolph-Sheppard Act in the book, "Light at the Tunnel End". And the reason I want you, if you would, to carry it back to Canada, is that one chapter concerns the assistance that we had in the early thirties from Mr. Joseph F. Clunk of the Canadian National Institute for the Blind. I remember Joe Clunk so very well and the inspiration and the knowledge that he brought to us. Senator Stafford, this program has been tried on a smaller basis in Canada. And we will have several copies of the book sent to you.

I wish to say, Mrs. Weber, that we will send you questions to be answered for the hearing record. I enjoy nothing more than listening, listening, listening, but the time element, for us as well as others, is something that we have not yet conquered. We are aware of it, and we cannot do anything about it. On the Senate floor, there is certain legislation which is identified with the committee I mentioned earlier, Environment and Public Works.

Now, we feel that these hearings have brought a series of informational, and often inspirational testimony. There are those within the Congress who work on this subject matter. There are others within the Congress who only are involved when we bring legislation to the Senate or House floors, really. So this hearing process is a means of letting those who are not closely associated with the legislation know that this effort is meeting with at least partial success in some areas and, we hope, with substantial success for handicapped children in other areas.

[The prepared statement of Mrs. Weber and the questions and responses referred to follow:]

STATEMENT

RESPECTFULLY SUBMITTED TO THE

SENATE SUBCOMMITTEE

ON THE HANDICAPPED

ON

Oversight Of P.L. 94-142, The
"Education For All Handicapped
Children Act"

On Behalf Of

United Cerebral Palsy Associations, Inc.
The Chester Arthur Building, Suite 141
425 "Eye" Street, N.W.
Washington, D.C. 20001

Witness: Doris Weber
Parent/Advocate
Kansas City, Missouri

Accompanied By: Kathleen Roy, Assistant Director
UCPA Governmental Activities Office

July 25, 1980

U.C.P.A. Governmental Activities Office Washington, D.C.

TABLE OF CONTENTS

Page

SUMMARY.. 1-2

INTRODUCTION... 3-4

RELATED SERVICES... 5

Interagency Agreements and Their Effects Upon Related Services.................................. 6-7-8-9

Recommendations Regarding Related Services.............. 9-10

THE LEAST RESTRICTIVE ENVIRONMENT AND PRIVATE SCHOOLS... 10-11-12

THE IEP AND DUE PROCESS PROCEDURES.......................... 12-13

Recommendations Regarding the IEP and Due Process Procedures.................................... 14-15

DORIS WEBER'S PERSONAL EXPERIENCES.......................... 16-17-18

SUMMARY

Prior to the enactment of P.L. 94-142, many affiliates of United Cerebral Palsy Associations, Inc., provided handicapped children with special education and related services. Many of our affiliates, through a variety of funding sources, continue to help LEA's provide related services to handicapped children. We feel that agencies such as ours can provide a great deal of positive direction to school systems in their provision of related services. We also firmly believe that interagency agreements between the Bureau of Education for the Handicapped and other federal agencies can enhance the provision of related services to handicapped children. In order to insure that handicapped children receive these related services which are required by P.L. 94-142, we have made the following recommendations:

- We firmly believe that full implementation of the abovementioned interagency agreements will help assure that the range of related services are provided to handicapped children.
- While such interagency agreements will increase the likelihood that these services will be provided, more funds will be necessary to meet this objective. Thus we recommend that the Congress consider providing more monies to meet the mandates of 94-142.
- We feel that the provision of related services is so important to the overall objective of providing handicapped children with a free appropriate public education that Congress may wish to target funds specifically for this purpose.
- Either Congress or BEH must specify who has "first dollar" responsibility and who has "last dollar" responsibility for the provision of related services. This responsibility was clearly stated in the November 29, 1978 BEH-Health Care Financing Administration (HCFA) joint program interpretation regarding the provision of educational services to residents of Medicaid Intermediate Care Facilities for the Mentally Retarded and Developmentally Disabled. Other interagency agreesments must be just as specific regarding exact financial responsibility.
- No amount of funds nor interagency agreements can replace the importance of strong and consistent Congressional oversight. Such oversight is essential if the mandate of P.L. 94-142 is to ever become a reality.

Also of concern to our organization is the IEP and the implementation of due process procedures. These two provisions were created so that parents of handicapped children had an opportunity to articulate their childrens' needs. Yet, in many instances, this has not been the case. Our testimony therefore makes the following recommendations:

- Additional financial resources and administrative support for parent training must be available. School systems should be responsible for some portion of these training activities, but independent parent training centers, advocacy organizations and state P&A systems must also be assisted to provide additional parent training.

- Technical assistance and in-service training for all teachers and administrators must be more widely available.

    - School systems must provide positive support (in-service days, recertification credit, release time) for teachers who participate in training activities.

    - Training must include information about

        - the unique needs of children with various disabilities, and

        - the possible effects on educational performance of those disabilities as well as

        - skills to work effectively with children with a variety of needs, and

        - adequate information about the contents of P.L. 94-142 especially the IEP process which is the heart of a free appropriate public education.

    - The same information about disabilities, methodology and the law must be included in all degree-granting programs responsible for the preparation of future teachers.

Finally, Mrs. Doris Weber is prepared to articulate her experiences in trying to educate three handicapped children in Kansas City, Missouri. Her testimony complements the points made earlier in this statement regarding both the provision of related services and the difficulty which many parents have experienced in obtaining an acceptable IEP for their handicapped child.

INTRODUCTION

Appearing on behalf of United Cerebral Palsy Associations, Inc., is Mrs. Doris Weber, Special Projects Director for Inland Industries, Inc. in Lenexa, Kasas. Mrs. Weber is the mother of three handicapped children, Phillip, Bernadette, and Thomas. She currently serves on both the Governmental Activities Committee and the National Advocacy Committee of UCPA. She is the President of T.A.L.L. (Training Alternative for Living and Learning Inc.), a program which provides training and job placement opportunities for severely handicapped persons. Mrs. Weber also serves on the Jackson County Board of Services which supervises the spending of mill levy monies for group housing for the handicapped and supplementary monies for sheltered workshops. Mrs. Weber plays an active role as a member of the Board of the Missouri Protection and Advocacy Services for the Developmentally Disabled as well as serving as corporate Secretary of the Metropolitan Council for the Developmentally Disabled. Finally, Mrs. Weber serves on the Parents Advisory Board of the Kansas City Public Schools and thus is instrumental in giving directions to the implementation of 94-142 within her own community.

P.L. 94-142, "Education for All Handicapped Children Act" has and will continue to have a very dramatic effect on the lives of our nation's handicapped children. Until the enactment of this legislation, the education of handicapped children was, at best, a fragmented and discouraging process. We at UCPA believe that we are in a unique position to comment on the implementation of P.L. 94-142 for two reasons. First, children with cerebral palsy vary in the degree of involvement from those children who are mildly handicapped and may need little special educational assistance, to those children who are severely and multiply handicapped with cerebral palsy and will need a variety of intensive special education and related services in order to reach their full potential. Second, prior to the enactment of P.L. 94-142, most UCPA affiliates were in the business of providing special education to children with cerebral palsy. While many of our affiliates continue to provide special education services to varying degrees (as will be discussed later in our testimony), many other affiliates are moving out of the business of education and into other services, such as adult programming and infant stimulation activities. We believe that this in itself is an indication that the mandate of P.L. 94-142 is having a positive effect on the education of handicapped children.

In June, 1978 the UCPA Governmental Activities Office issued a report entitled "UCPA Affiliates Report Implementation Experiences With P.L. 94-142: The Education for All Handicapped Children Act." This survey indicated that there were three major areas of concern to UCPA affiliates: 1) the provision of related services to children with cerebral palsy, 2) the concept of least restrictive environment and its relationship to private schools, and 3) the I.E.P. (individual education plan) and due process procedures and their effect upon handicapped children and their families.

Further on April 16, 1980, thirteen advocacy organizations led by the Children's Defense Fund and Mental Health Law project issued a devastating attack on the nation's failure to implement adequately P.L. 94-142, the "Education for All Handicapped Children Act."

The report concludes that "hundreds of thousands of handicapped children nationwide have been denied essential services because of state and local education agencies' noncompliance....and the concomitant failure of the federal Bureau of Education for the Handicapped (BEH) to enforce the Act." Ten states - CA, CO, FL, IL, MI, NY, PA, TN, TX, and VT and the District of Columbia were examined in this study.

The report identifies nine areas of noncompliance: (1) unserved children; (2) inappropriately served children; (3) denial of related services; (4) unnecessarily segregated classes; (5) misclassification and inappropriate placement of black children in classes for the educably mentally retarded; (6) illegal suspensions or expulsions from school; (7) no individual education plans; (8) no system for identifying children in need of surrogate parents; and (9) inadequate notion of rights to parents.

The advocates concluded that BEH has "failed to remedy this situation because of inadequate staff, policy-making, monitoring and enforcement, with only 20 relatively untrained staff...."

Our statement will thus attempt to address some of these issues and offer the subcommittee some possible solutions to these problems.

RELATED SERVICES

Children with cerebral palsy vary in both the degree and type of their neurological involvement. For this reason the provision of related services to children with cerebral palsy is critical. Some children may need a combination of related services such as physical, speech, and occupational therapy and the provision of these services as early as possible in the life of the child with cerebral palsy can often reduce, and in some cases substantially eliminate, the handicapping condition. Prior to the enactment of P.L. 94-142, UCPA provided children with cerebral palsy with such related services. Now the question is raised, to what degree are school systems beginning to take on their responsibilities as far as providing these related services, and what is the role of agencies like UCPA in assisting school systems to meet their responsibilities in this area?

P.L. 94-142 clearly states that our nation's handicapped children are entitled to special education and related services which meet their individual needs. "The Act describes related services as developmental, corrective, and other supportive services including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, medical and counselling services." The term "related services" includes "transportation" as well as those listed in the Act. It also includes school health services, social work services in schools, and parent counselling and training. Thus, there are a broad range of services which are to be provided to handicapped children under the auspices related services. However, the survey of our affiliates found the provision of related services generally inadequate or unavailable.

P.L. 94-142 is still in its infancy stages of implementation, and as both State and local education agencies begin to take on their responsibilities in educating our nation's handicapped children, the provision of such related services will continue to improve. However, during the critical period of implementation, we believe that agencies such as UCPA affiliates can enter into a partnership with both the SEAs and LEAs in providing some of these related services. A brief look at what several of our affiliates are already doing to provide such services may assist the Subcommittee on the Handicapped to better envision how our affiliates can be of assistance.

UCPA of Northeast Maine in Bangor received last year $54,566 in federal funds, a combination of local education monies as well as ESEA Title I monies. Through these funds our affiliate in Bangor was able to provide school age children with education and related services. Our affiliate provided and continues to provide infant and preschool programs for young handicapped children. These programs and funds are complemented by $20,000 in Title XX Social Services funds to operate a home based developmental therapy program for children ages 0-5 and $3,000 for a summer camp program. The State Mental Health Department grants UCPA $2,000 and the State Developmental Disabilities Agency grants $13,330 for its infant development program. The Title XVI of the Social Security Act (Mikva Amendment), administered by the State Crippled Childrens' Agency, grants UCPA $1,000 for services to preschool children receiving Supplemental Security Income. Thus, educational funds are combined with five other agency funds to provide the continuum of related services required by children with developmental disabilities in Northeast Maine.

UCPA of Chicago receives approximately $400,000 in both ESEA Title I and P.L. 94-142 funds. This affiliate also receives approximately $395,000 through the Department of Illinois Mental Health Division of Developmental Disabilities. With these funds UCPA of Chicago is able to provide special education and related services to approximately 150 severely handicapped children in the Chicago area.

UCPA of Hawaii receives $35,000 from the Department of Education to provide a special education class which focuses on physical, speech, and occupational therapy and sensory stimulation.

Thus, UCPA affiliates have expertise in providing related services to handicapped children. We would encourage the Congress to continue to foster such cooperative agreements whereby State and local educational agencies work with private agencies to provide the related services previously described. Such a sharing of responsibility will surely enhance the quality of education and related services which are given to handicapped children and may also serve to help education agencies feel less overwhelmed with their mandated responsibilities.

UCPA can also assist the SEAs and LEAs in helping the regular classroom teacher with the responsibilities of educating severely handicapped children on a day-to-day basis. UCPA has had experience in providing workshops and conferences to help educators and families understand principals of normal growth and development and to assist the child who is severely physically involved to participate in more normalized activities and settings. The following example illustrates how one such conference helped a severely involved child participate more successfully in a regular classroom setting:

> A teacher with a regular classroom who had an eight year old child with cerebral palsy in her classroom learned that the recommendation of the occupational therapy consultant that included a great deal of complicated bracing was not really needed for this particular child during the course of this conference. Thus, she was able to discuss the child's therapy recommendations with more intelligence and expertise.

While we realize that this type of assistance will be required largely on an individual basis, we would encourage SEAs and LEAs to utilize this type of expertise. Such consultative assistance will enhance the quality of education for severely handicapped children and may enable more children with cerebral palsy to participate in regular classroom settings.

Finally the provision of transportation, as a related service, and its relation to the total educational experience must be discussed. Transportation, in and of itself, may not be a key factor in education of handicapped children. However, transportation, as it affects access to all other types of related services is critical, and results from our study indicate it is generally sadly lacking. "Transportation is a related service which most responding states and localities provide. However, transportation services are frequently inadequate and have harmful effects on the child..." In Maryland, for example, there are too few bus vehicles, necessitating multiple stops resulting in physical and emotional strain on children, drivers, and driver assistants. UCPA of California indicated that transportation to therapy for children, mainstreamed into regular classrooms is a major concern. The report found that generally it is more costly for the therapists to travel to individual schools than to transport children to centralized locations for therapy. The report concluded that unless school districts are able to provide transportation to therapy, parents preferred special school placements. Thus, the lack of transportation undermines placement in the least restrictive alternative - the regular classroom or school.

UCPA believes that the provision of transportation is a key factor in accessing all other related services to handicapped children. Because transportation is central to all other types of related services and because it is a problem which appears to be widely experienced the Congress may wish to give this problem special consideration. Again, we suggest that SEAs and LEAs be encouraged to contract with agencies such as UCPA who already have some degree of expertise in this area. Such agreements will enable the SEAs and LEAs to effectively utilize existing expertise and in turn, allow them to focus their efforts on other areas of special education.

- Interagency Agreements and Their Effects Upon Related Services

The provision of related services is critical to the total educational experience for handicapped children. Yet, many children are not receiving these services. In order to address this problem, the Bureau of Education for the Handicapped (BEH) has entered into a number of interagency agreements which are designed to access services to other federal programs already providing related services. The number and extent of these interagency agreements is beyond the scope of this testimony; however, a look at a few of these agreements may aid in our understanding of how related services can be provided through a cooperative effort at the federal level. Further, a look at the effect which these agreements are having on the local level may also indicate the direction which P.L. 94-142 must go if related educational services are ever to be provided in a comprehensive manner.

BEH has entered into a cooperative agreement with the Administration on Children, Youth and Families (ACYF). The effect of this agreement will be that ACYF and BEH will work closely to assure that children who are in Head Start Programs receive a continuum of educational services. As stated in the memorandum of understanding between BEH and ACYF:

> "...In order that children participating in Head Start Programs may fully realize their potential and benefit from a continuing education and related service, it is imperative that Head Start grantees and delegate agencies and State or local education agencies work closely together... Cooperation between State and local education agencies and Head Start is a priority effort of both the Bureau of Education for the Handicapped (BEH) and the Administration for Children, Youth and Families (ACYF) in order to assure handicapped individuals of full opportunities under their respective programs."

BEH has also entered into a cooperative agreement with Bureau of Community Health Services (BCHS) which administers the State Maternal and Child Health and Crippled Childrens' programs. This particular policy statement also addresses the cooperative delivery of "related services" provided and mandated by both agencies. As the joint policy statement between these two agencies indicates:

> "Both constituent agencies within HEW have mandates, under federal law, to identify, screen, and evaluate young children for potential handicapping conditions. Both agencies may provide similar services including counseling, referral and case management...
>
> The BEH and BCHS recognize that these similar mandates may, in some cases, lead to duplication of services, or alternatively, for a child to receive the services of one and not the other. Both agencies recognize that early intervention of all service deliverers is of great importance in assisting the handicapped to success."

These and other interagency agreements are surely intended to foster a better understanding between BEH and other federal programs and such understanding can only enhance the quality of implementation of P.L. 94-142, especially the provision for related services. To this end, UCPA feels that BEH has taken a very laudable first step in facilitating communication between a number of agencies of the federal government.

Yet, the question must be asked, how are these interagency agreements being translated at the local level? Are they having any impact on the provision of related services to handicapped children? While it may be somewhat premature to judge the true effects of these interagency agreements, the survey of our affiliates indicated that in many instances, related services are sadly lacking. Some excerpts from our survey will illustrate the problem:

> "...Alabama's problems with related services are rooted in the vagueness of P.L. 94-142. No consensus has been reached regarding who pays for related services that may be identified as needed in order for a given child to benefit from special education. Related services are generally not available in Illinois..."
>
> "Reasons cited by school authorities for denying children related services include:
>
> (1) Insufficient funds: Sonoma, San Mateo, and Santa Clara counties, California and Arizona
>
> (2) Services not basic to education: Seattle, Washington
>
> (3) Occupational therapy not a school responsibility: San Mateo County, California
>
> (4) Lack of speech therapists: San Mateo County, California
>
> (5) Therapies only available to families meeting Crippled Childrens' Services income eligibility tests: Los Angeles, California."

Perhaps equally as disturbing is the fact that other agencies and organizations concerned with accessing services to handicapped children are also finding that the provision of related services is not being fully implemented. In a letter to the UCPA Governmental Activities Office, Mr. Michael Reynolds, Communicator Program Manager for Telesensory Systems, Inc., (a company which designs a variety of technical devices to aid the handicapped) indicates:

> "Although I am aware of several instances in which specific technical communication aids have been recommended in children's IEPs, funding for these aids has not always been easily obtained. Thus far, for example, we have seen only a single instance in which a Cannon Communicator has been funded by a state Medicaid program; many more requests have been declined as inappropriate."

The vagueness of pinpointing responsibility for related service financing creates a "Catch 22" situation. In April, 1979, Vanessa M. Sheehan of the law firm of Pelletreau and Pelletreau, Patchogue, New York wrote BEH stating that some private health insurance companies have refused to pay claims for related services, such as physical and occupational therapy. In his May 21, 1979 reply, Thomas Irvin, Chief, State Policy and Administrative Review Branch, BEH, demonstrates the vagueness of responsibility:

> BEH regulations "provide that insurers are not relieved by Part B from otherwise valid obligations to pay for services to handicapped children... Further, there is nothing in the regulations which require that parents of handicapped children use their insurance benefits for related services such as physical or occupational therapy..."

If a SEA or LEA, knowing a parent has private insurance coverage, refuses to finance related services, the parent has no choice but to use it. They have thus used up benefits which other family members may need. They have stimulated the need for higher premiums. And the situation promotes negotiation while children are not served.

We are not citing these examples to be overly critical of any one federal agency or to infer that BEH has done less than an adequate job. Rather, we feel that the provision of related services will take a great deal of interagency cooperation over time in order to achieve the type and quality of related services which is envisioned in P.L. 94-142.

- Recommendations Regarding Related Services

Because the provision of related services is so critical and because it appears that this is an area of P.L. 94-142 which has not yet been fully realized, we would like to offer the following suggestions:

- We firmly believe that full implementation of the above-mentioned interagency agreements will help assure that the range of related services are provided to handicapped children.

- While such interagency agreements will increase the likelihood that these services will be provided, more funds will be necessary to meet this objective. Thus we recommend that the Congress consider providing more monies to meet the mandates of 94-142.

- We feel that the provision of related services is so important to the overall objective of providing handicapped children with a free appropriate public education that Congress may wish the target funds specifically for this purpose.
- Either Congress or BEH must specify who has "first dollar" responsibility and who has "last dollar" responsibility for the provision of related services. This responsibility was clearly stated in the November 29, 1978 BEH-Health Care Financing Administration (HCFA) joint program interpretation regarding the provision of educational services to residents of Medicaid Intermediate Care Facilities for the Mentally Retarded and Developmentally Disabled. Other interagency agreements must be this specific regarding exact financial responsibility.
- No amount of funds nor interagency agreements can replace the importance of strong and consistent Congressional oversight. Such oversight is essential if the mandate of P.L. 94-142 is to ever become a reality.

THE LEAST RESTRICTIVE ENVIRONMENT AND PRIVATE SCHOOLS

P.L. 94-142, through its mandates of least restrictive environment and the provisions for a free appropriate education clearly encourage the placement of handicapped children in public schools. As the Executive Director of UCPA of Wisconsin, Mrs. Sue Kendrick, testified before the Subcommittee last year:

> "I feel that the majority of children could be mainstreamed if schools are given the flexibility to be creative in seeking solutions and if adequate funding is available. If we are ever to overcome the attitudes and other barriers that prevent full participation of people with disabilities in our society it is essential that people with and without disabilities have opportunities to know, understand, and appreciate each other."

Certainly UCPA applauds regular classroom placement of handicapped children whenever it is appropriate. However, we also recognize that there are times when private special education in a support environment is most appropriate to meet the child's needs. Because children with cerebral palsy vary in degree of neurological involvement, some of these children in fact may need such private education settings.

Recently UCP of New York City successfully completed litigation against the New York City Board of Education related to the fact that 14,000 handicapped children were found to be in need of special education yet were still not receiving such an education through the public school system. Some of the major issues in the case were: 1) long waiting lists of handicapped children unserved by the school system, 2) the lack of accessible public school buildings, and 3) the appropriateness of the school placement for many handicapped children. As a result of this litigation, UCP of New York City is working with a Special Master which was appointed by the Court to bring about changes which are needed in the Board of Education procedures for serving handicapped children. In conjunction with this, UCP of New York City is also meeting every two weeks with the Board of Education in order to assure that handicapped children in New York City receive the services mandated by P.L. 94-142. We feel that this is an excellent example of how UCP affiliates who have worked with handicapped children for several years can become a catalyst for changing our nation's public school systems.

In our survey, some parents indicated anxiety about the quality of education which their children were receiving in public schools. As the survey indicates, "In New York the public sector has generally ignored the role of private education providers and has failed to coordinate and utilize private education resources...The concern of private agencies in these states, as well as in Ohio, is with the quality of service - a fear that in attempting to serve large numbers of previously unserved children, public schools are sacrificing quality of service..."

It is important to realize that what is considered the least restrictive environment may change as the individual child's needs change. For children with cerebral palsy this may mean that a child is in a regular classroom for awhile, but is allowed to return to the private school if that child's developmental needs warrant such a placement.

UCPA realizes that the decision of a child's placement must be made on an individual basis. Further, we fully expect both SEAs and LEAs to take on their responsibilities in meeting the educational needs of handicapped children. (Such a process will clearly be enhanced through improving related services as discussed previously.) However, we also believe that even when related services are fully provided, and education agencies are in total compliance with 94-142, there will still be a place for the private school in meeting the unique needs of some handicapped children. We point this out only because we feel it would be a grave error for the Congress not to continue to fund private schools as the least restrictive environment for some children.

From informal contacts with our affiliates, most LEAs (other than those previously cited) have consulted with private school officials before submitting their applications for P.L. 94-142 funds. This has been helpful in determining the nature and extent of services to private school handicapped children.

Despite this consultation financial reimbursement has been a serious problem, such as in San Francisco, Los Angeles, and Illinois.
Provisions for serving private school handicapped children may not include the financing of the existing level of instruction in the private school. Since parents are not expected to pay part of the education costs, the quality and scope of educational services may diminish for some children. BEH has carefully avoided becoming involved in this area. In a May 9, 1979 letter to Frank Guthridge, Executive Director Child Development Center, Norristown, Pennsylvania, William D. Tyrrell, Chief, Policy Section, BEH, stated:

> "The specific nature of contractual arrangements between public and non-public education agencies serving the handicapped remains a State matter subject to all applicable program standards."

UCPA recommends that either the Congress or BEH require public reimbursement of the existing level of education and related services in private schools. P.L. 94-142 should not be an excuse to diminish the quality of education.

THE IEP AND DUE PROCESS PROCEDURES

The IEP and the Due Process Procedures are truly the key to the mandates of P.L. 94-142. Without these provisions, parents, advocates, and the Congress, would have no assurance that children were in fact receiving an education which fully meets their needs. It is therefore a bit ironic that these two provisions appear to have the most problems in implementation at the State and local level. We would like to briefly discuss these provisions and make some recommendations to how the law might be strengthened so that these two aspects of the law could be better utilized.

Two parents, Mrs. Sue Kendrick (refer to earlier citation) and Mrs. Lee Viets, (Executive Director, UCPA of Vermont) have testified before the Senate Subcommittee on the Handicapped last year that they have had substantial difficulty with their child's IEP. As Mrs. Kendrick stated,

> "...Although I have yet to participate in the development of my own child's IEP, I feel participation is essential to insure that the recommendations of the M-Team will be carried out and exactly how they will be done so. It is also vital that parents have a copy of the IEP in order to know from progress reports (report cards) and parent-teacher conferences whether the goals and objectives for their child are being accomplished."

Further, as Mrs. Viets said,

> "...And so, a year ago, prepared, I thought, by my experience as an advocate for others, I called the school to request an evaluation and the development of an IEP for my daughter. I found the reality of local implementation to be seriously flawed... This supposed IEP consisted entirely of suggestions concerning adaptations to the physical environment which has been made by me to the school guidance counselor following a conference with the Child Development Clinic. The identified problem was listed as "physical handicaps caused by cerebral palsy" with an annual goal "to eliminate as many barriers as possible for Diana---to encourage her to be independent and successful." This document did not meet any of the criteria for the content of the IEP as stated in the regulations (121a346). When I called to inform the school that this was not an acceptable IEP I was told only that no services would be provided without my signature..."

Thus it is apparent that the provisions of the IEP--which are to assure that a child's individual education needs are met--is still having difficulty being translated at the local level. Mrs. Kendrick is an occupational therapist and Mrs. Viets is a teacher by professional training. Both are involved with their SEAs in developing state-level P.L. 94-142 policy and yet each has experienced difficulties in developing IEPs for their handicapped children. If these professionals are having problems, one wonders about other parents.

Equally disturbing is the way in which due process procedures are being carried out. Ideally, this should be a process which parents can turn to when they feel that their child's needs are not being met. On a realictic level however, this is often far from the case. As our survey indicates,

> "Ohio requires an administrative review process prior to the due process hearing. While hundreds of parents have participated in the administrative review process, relatively few have been involved in due process hearings. Either parents are not adequately informed or they are intimidated at the administrative level for complaints persist."

In Alabama due process hearings are frequently too complex, cumbersome, and potentially time-consuming and expensive. The adversarial nature of the hearing inhibits the parent. Many parents fear "retribution" by school officials.

In their report to the Congress entitled "Towards A Free Appropriate Public Education" (issued in January, 1979) the Bureau of Education for the Handicapped acknowledged that, while mechanisms for due process were in place in some states, other states would need more time in order to fully develop this provision of P.L. 94-142. As their report explains,

> Members of the Bureau's site-visit teams report that most of the State due process procedures are still in the early stages of development. However, from observation of provisions already in existence and of scattered due process actions, it is possible to speculate about some of the issues that seem likely to emerge. Most of the available systems stress formal due process hearings and place less emphasis on parent or child involvement prior to the school's decision for an educational placement. Yet, active parent involvement in developing the initial special education program could deter possible conflicts later on, by encouraging parents and schools to work as partners rather than as adversaries. Those due process procedures that do not provide an opportunity for informal resolution of differences of opinion between the home and school may not be well adapted to the field of education, which relies on the school, the parents, and the child to develop sound programming decisions.
>
> Ideally, due process systems should also provide equal bargaining power between the school and the parents. As many observers have pointed out, when a parent at a due process hearing is not represented by counsel but the school system is, the hearing is hardly a contest between equals. Mere notice to the parent of the "right" to be represented may not be sufficient. Many parents, particularly those from disadvantaged or minority backgrounds, may not be able to obtain legal counsel, and many of the current State due process systems do not take such factors into account.

- Recommendations Regarding the IEP and Due Process Procedures

Solutions to the problems which are present in both the IEP and the Due Process Procedures are not easy. However, we would like to emphasize that these two provisions are absolutely critical to the complete realization of the goals of P.L. 94-142. It would be a terrible mistake to weaken either the IEP or due process procedures for, as we pointed out earlier, these are the only means of reconciliation which parents of handicapped children have if they feel that their child is not receiving an education which fully meets his needs. However, UCPA feels strongly that there are clear ways to strengthen these provisions so that they are more workable for parents and school personnel alike. Mrs. Lee Viets made the following suggestions:

- Additional financial resources and administrative support for parent training must be available. School systems should be responsible for some portion of these training activities, but independent parent training centers, advocacy organizations and state P&A systems must also be assisted to provide additional parent training.

- Technical assistance and in-service training for all teachers and administrators must be more widely available.

  - School systems must provide positive support (in-service days, recertification credit, release time) for teachers who participate in training activities.

  - Training must include information

    - about the unique needs of children with various disabilities, and

    - the possible effects on educational performance of those disabilities as well as

    - skills to work effectively with children with a variety of needs, and

    - adequate information about the contents of P.L. 94-142 especially the IEP process which is the heart of a Free Appropriate Public Education.

  - The same information, about disabilities, methodology and the law must be included in all degree-granting programs responsible for the preparation of future teachers.

To add to Mrs. Viets' comments, we feel that the Congress must continue to give BEH both the support and laditude which it needs in order to work some of these more difficult problems out. With respect to the due process procedures, it is virtually impossible for the Congress to legislate sensitive communication between parents and the school system. However, as we have already pointed out, BEH can offer both technical assistance and direction to states which will assure that the due process mechanism which is in place assures that the process which parents will follow is as objective as possible.

Office Of Special Education Staffing Problems

As mentioned earlier, a coalition of advocacy organizations published a report which stated that the Office of Special Education (formerly BEH) has been lacking in their compliance efforts. Indeed some of the issues which were raised in that report indicate some valid concerns regarding the amount of compliance efforts which the Office of Special Education is making. In researching this problem we have found that staff of the Office of Special Education are also concerned about these problems and cite two reasons: 1) need for additional compliance personnel and 2) need for additional monies to carry out compliance review activities. In discussing the staffing for compliance review with the Office of Special Education, it appears that an additional 20 positions are needed in order to effectively monitor compliance practices within the States, In addition, it appears that an additional $100,000 is needed to carry out compliance reviews and on-site visits. The Office of Special Education has explained that while there is currently $150,000 set aside for this purpose, this has not been enough to adequately monitor states efforts to comply with the law.

It is also our understanding that the Office of the Secretary within the Department of Education will soon release a study which will reach many of the same conclusions articulated by the advocates report. Additionally, this study will recommend additional compliance personnel and monies for this purpose. If in fact the study done by the Office of the Secretary substantiate the finding of the Advocates report, the Subcommittee should give serious consideration to increasing both personnel and funding for compliance review.

Doris Weber's Personal Experiences

The opportunity to testify regarding P.L. 94-142 is a challenge I appreciate because it allows me to hopefully say it's great that this piece of legislation has enhanced the lives of many individuals with disabilities and that with increased appropriations its impact can be the most distinct reason for children with disabilities becoming independent, tax paying adults.

I am the mother of 8 children, 3 of whom are classified as handicapped. They are Phillip 17, Bernadette 15 and Thomas 12. They received pre-school training through a United Cerebral Palsy Day Care Center and with persistence on my part and involved related agencies, have attended public schools since they were 7. In light of my high expectations, particularly since the passage of 94-142, the process has been disappointing and frustrating, but the results are very satisfactory. Much of the success has been due to beautiful teachers, not the system.

As I relate to you why I make the above statements, I am consolidating not just what occurred with my three children, but the awareness I have gained as a member of United Cerebral Palsy National and local committees and Boards and as a member of other DD advisory groups, particularly the Missouri Protection and Advocacy System.

Our school systems are definitely challenged by this legislation, but systems are people not things, which means they are flexible. However, to accept a challenge well, all of the individuals concerned need more assistance in understanding what we are all about. Their education is incomplete.

Bernie, Phil and Tom delight in going to school. They should have as many diverse opportunities open to them in their teen and early adult years as my five other children did but irrespective of the law, they are not and have not been allowed the same experiences. They were not able to attend the same private schools, so we emphasized the joys of attending public schools. They learned that some school personnel did not open their arms to them, that they often had to take separate busses and that other students were often cruel. My daughter's hair was set on fire by her normal peers last year and because of psychological problems that ensued, she was out of school for two months. As Phillip has matured he has wanted to participate in sports, take art and be prepared for employment before he is 18. Tom just wants to go to classes like his "normal" friend Kevin. That type of normalization has not occurred, but we are working toward it. The people who make the system and the students who participate in it need sensitivity training, education as to what the individual disabilities are and on-going support. Then my children and all others with disabilities can be normalized to their capability level.

Everyone talks mainstreaming and it has many faces as I'm sure you are aware. Mainstreaming to me is just having the chance to be integrated into everyday patterns of life and being educated in such a manner that an individual feels like a "whole person" I really do not feel this is an impossible feat and many school districts are implementing such a process. The problem is, not all school districts are synchronized to this thought process.

The opportunity to obtain an education - a priceless commodity in bargaining for a normalized future in today's society - is now available under the auspices of a law. My observations are that: the extent to which an individual child can access this commodity is determined by (1) the parent's advocate's or guardian's, awareness of the law and the implications of such; (2) the local school district's funds and implementation package or plan; (3) the enforcement or monitoring of the local educational system by the State and Federal regulatory agencies; (4) the involvement of all concerned related agencies and (5) whether ongoing awareness training and/or education of professionals (teachers, psychologists, nurses and physcians, therapists, etc.) has been established.

We know that all children are not receiving an adequate or appropriate education, thus, all of the above are not in place.

A marvelous tool called an I.E.P. is provided for in 94-142, but the beauty of its use is often lost in the fear of school administrators regarding the legal implications; the insecurity of teachers who have not received adequate training in its development and use; and the parent's lack of awareness regarding its existance and importance. The degree of development of the I.E.P. is often dependent upon either the School Administrator or the parent's assertiveness. Because my children have attended many schools within the same district and state, their IEP's have ranged from being very inclusive to very brief. For example: It was time for an IEP for Bernadette and via many communications with the Principal, I had requested the involvement of all of her teachers. On IEP day I walked into the classroom with the Principal to be met by five (5) standing teachers. I felt like a general inspecting the troops. He introduced me and said "As you know this meeting is to develop an IEP for Bernadette Weber. Mrs. Weber will tell you what is expected of everyone." This was totally unfair to all concerned, but never to be daunted, I proceeded to inform and an adequate tool emerged. I'm sure that not one other handicapped child in that school had such an inclusive IEP or possibly even an adequate one basically because of the reasons listed before.

A discrepancy that occurs is that if a service is not available in the overall system that specific service (ex. OT or vocational education) is not written into the IEP, yet if it is being written for the same child for a purchase of service agreement in a private school the need is very definitive. I question the need for the expenditure of so much purchase of service money when the total system should be absorbing these services into their schools thus providing a more thorough, all around educational system for all handicapped children.

One of the above mentioned services is pre-vocational and vocational education. It should be an integrated part of the total academic picture for our children but it is still a premium. Phillip and Bernadette have their sights set on realistic types of employment, but even with my constant input, the need has not always been addressed. I found professionals very willing to admit the need but reluctant to include it to the degree to which I felt it was necessary "because we really do not have the capability to provide it at this time." I believe this occurs because they are not equipped to ascertain what the true capabilities of our children are in regard to future employment and lack of funds, but I am not prepared to accept this an an excuse.

An increase of in-service training for school professionals is occurring but it needs to be expanded. Just recently I read that Universities are recognizing the value of expanded curriculum for their educational departments regarding handicapped children because [illegible] 94-142. By utilizing this resource we can minimize the fear of "the law" and accentuate the capabilities of the student who has a disability. Perhaps then the caseload for P&A;s could begin to be shifted from educational priorities to investigating the development of resources to expand the individual with a disability's life-style.

You must emphasize that 94-142 funding also be used by school districts to instruct and train parents. As a participant in a Patent Advisory Group for the local system, I can tell you that most parents do not yet know enough about the law, their children's rights or how to implement it and it concerns me greatly. I realize that school administrators might visualize that this would result in troops of Moms and Dads descending upon them, but in those cities wher this type of training has been implemented, it has been a resource to the school, not a hindrance.

I do not see the Courts as being the sole way to bring school districts "around" but the monitoring and/or enforcement must be imporved. The major handicapped programs would then feel that they were not at times spinning their wheels. The absence of particular services necessary to the full development of a child should not be tolerated, especially when the lack of it is obvious upon the submission of the yearly plan, nor should the existence of completely separate schools for children with disabilities. It is the prevalence of inequities that is promoting lawsuits by parents and P&A's. If the mandated agencies do not fulfill their obligations to enforce the law, then it will continue to be necessary to enter the courtroom and waste time money and energy.

My children's future is much brighter because of the existence of 94-142 for the following reasons. The proper development of an IEP has been responsible for obtaining psychological help for my daughter and set in motion on a first time look at pre-vocational awareness and basic training in an area Bernie is interested in. This is what motivated her to return to school and stay there. It is now an integral part of her I.E.P. She is anxious to get on with her life.

Thomas is going to have the opportunity to return to school this year in a regular classroom 85% of his school day. His IEP's have been criticized at times but the teachers have been specific in following each objective and timeline with Tom and me and attempted to interlock all of the pieces of a puzzle known as Tom. Tom is a bit apprehensive, but hopefully the majority of his peers will accept him.

Phillip seems to have been denied access to more normalized conditions than the others. His IEP's were sometimes adequately developed, but inferiorly implemented. While in a foster home quite a distance from his home city, he and others were the objects of school isolation and the class that was vocationally oriented was withdrawn. After 4 years he is now with his family and the IEP that will control his school year is oriented toward the whole Phillip, academically and vocationally. He is looking forward to September.

Each year my expectations for all handicapped children increase as schools use the resourcefulness that are known for to upgrade their programming. My children have been fortunate in many instances to have encountered marvelous teachers who have given them the desire to exceed their success of the day before. My hopes are that everyone within a school will one day enjoy the progress of those who were considered "not to have it" and appreciate the fact that they - be it teacher, principal, aide, student - had exercised a particiaption in that challenge and success.

94-142 will ultimately be responsible for those successes.

Thank you.

AUG 2 8 1980

UNITED CEREBRAL PALSY ASSOCIATIONS, INC. • 66 EAST 34th STREET • NEW YORK, NEW YORK 10016
(212) 481-6300

REPLY TO:

UCPA Governmental Activities Office
Chester Arthur Building
Suite 141
425 I Street N.W.
Washington, D. C. 20001
(202) 638-6169

August 26, 1980

Honorable Jennings Randolph
Chairman
Senate Subcommittee on the Handicapped
Room 4230
Dirksen Senate Office Building
Washington, DC 20510

Received
Date 8-28-80
Subcommittee on
The Handicapped

Dear Senator Randolph:

Enclosed please find the responses to the questions which you submitted to me regarding the implementation of PL 94-142, the "Education for All Handicapped Children Act." Allow me to take this opportunity to thank you for the experience of testifying before the Senate Subcommittee on the Handicapped on July 29, 1980. Clearly, the work which the Subcommittee is doing on behalf of handicapped children is extremely important.

Should you have any further questions regarding the testimony which I gave on behalf of UCPA, please feel free to contact our Governmental Activities Office here in Washington.

Sincerely,

Doris Weber
Southwest District Representative
UCPA Governmental Activities Committee

Enclosure:

LEONARD H. GOLDENSON, CHAIRMAN OF THE BOARD • JACK HAUSMAN, VICE CHAIRMAN • NINA EATON, VICE CHAIRMAN • MARGARET O. MURRAY, PRESIDENT • WILLIAM BERENBERG, M.D., VICE PRESIDENT MEDICAL AFFAIRS • EARL H. CUNERD, EXECUTIVE DIRECTOR

1. You stated that "if a service is not available in the overall system that specific service is not written into the IEP, yet if it is being written for the same child for purchase of service agreement in a private school the need is very definitive." Could you explain this situation further?

When I sought vocational education for my daughter, Bernadette, the public school system put in a purchase of service agreement for vocational education services to be provided by a private school. However, the same vocational education services were not in her public school I.E.P. Further, in my efforts with the Missouri Protection and Advocacy System, I have found that occupational and physical therapy are often not stipulated in children's I.E.P.s. Even when these services are required, they can only be obtained through a purchase of service agreement. The school system argues that they have insufficient funds to provide such services. However, I believe that the school systems could provide these services and most likely provide them at a much lower cost. (It should be noted that a purchase of services agreement sometimes can only be obtained through a grievance procedure which is similar to the due process procedure.) I would also call your attention to the portion of our testimony which discusses interagency agreements. It appears that if school systems were to begin to work with other agencies which provide similar services, the cost to the school system would be greatly reduced.

2. Based on your experiences with your children and your experiences with UCP and the Missouri Protection and Advocacy system, how do you feel that special education programs for high school aged children compare with special education programs for elementary school children?

There remains a great discrepancy between the quality of education provided by the elementary and secondary school system. This is exemplified by the increasing number of disabled youngsters who are dropping out of junior high and high school. Often disabled youngsters who are not academically inclined find it difficult or impossible to receive vocational education. While vocational education is important for all youth, it is critical for handicapped youngsters who need these skills to function in the adult world. I strongly urge the subcommittee to investigate how the 10% set aside earmarked for the handicapped in the Vocational Education Act is being utilized. I am deeply concerned about this provision of the Vocational Act and its effect upon handicapped children. Even when vocational education is provided to handicapped youth, it may be inappropriate, such as the placement of a handicapped youth in a sheltered workshop when that person could function in a competitive environment. As you know, states are obligated to spend 10% of their vocational education monies toward meeting the needs of handicapped students. I am especially concerned that states may not be meeting their obligations under this mandate.

3. You indicated in your testimony that some UCPA affiliates receive funds under interagency agreements for the provision of education and related services. Your testimony appears to indicate that these services are provided within UCP centers rather than public school facilities. Does UCPA encourage its affiliates to provide services within public school facilities rather than UCPA centers?

Prior to the enactment of PL 94-142, the "Education for All Handicapped Children Act," approximately half of UCPA's affiliates provided special education and related services to children with cerebral palsy. In recent years there has been a drastic decline in the number of children receiving such services from our affiliates and we believe that this indicates that these children are receiving such services through the public school system. However, many of our affiliates continue to provide related services, such as speech and physical therapy. While each area of the country is different, the National Office of UCPA encourages affiliates to work with their local education agencies whenever possible when providing these services.

In many instances both physical and occupational therapists are provided by the affiliate to the school system in order to access and plan programs for children with cerebral palsy. Some of our affiliates continue to provide services to children whom the school system is not yet ready to serve. Further, there appears to be a lack of trained personnel who are qualified to render these services and this necessitates UCPA involvement. It is important to emphasize that many of our affiliates have a close working relationship with their school systems and view their provision of related services at the affiliate not as an alternative to mainstreaming these children but as a partnership whereby the school system and the affiliates can work together to assure a free appropriate public education.

4. Private school placement may be required to meet the unique needs of some children but certainly not all children. Since private school enrollment is often seen as more desirable by some parents, regardless of needs, how would you suggest that a differentiation be made between those who require private school programs and those who simple desire it?

If the public school system can provide the handicapped child with an appropriate public education, then parents of these children should not request private school placements. However, I am quite concerned about the number of parents who must seek private placement for their children. The fact that many families do not feel that the public school systems can meet the needs of their handicapped children leads me to believe that the school system is not meeting their needs. Perhaps, as we have already suggested, the Office of Special Education should increase their monitoring capabilities, and thus increase the likelihood that more children could be appropriately served by the public school system.

Doris Weber
Southwest District Representative
UCPA Governmental Activities Committee

Senator **Randolph**. Bob, if you would take over now, as we go into this second half of the hearing.

I believe Mrs. Crawford will be the next witness. I just wish I could remain, as I know you would have liked to have been here earlier, and as other members of our subcommittee would have wanted to be present.

[Whereupon, Senator Stafford assumed the Chair.]

Senator **Stafford**. Mr. Chairman, I will be glad to preside over the second part of the hearing. The problem for us, as the chairman probably has said, is that we are both involved in a bill involving the disposition of nuclear waste, on the floor of the Senate, as well as the necessity of presiding over the meetings of this subcommittee this morning.

I would like, as a matter of personal privilege, before we go to the next witness, to extend my welcome also to the Canadian Members of Parliament who are here. During the period 1960 to 1970, I had the privilege of serving on the Interparliamentary Group between the United States and Canada. I remember the awesome hospitality that you extended to us in Ottawa every other year when we came up there, and we were always very happy to see Canadians come down to Washington in the other years.

But over the last 10 years, I have been a member of our Delegation to International Parliamentary Union Meetings—I do not know whether any of the members present here have served as a delegate from your country or not. But I will say that in our various struggles which have often involved confrontations with the Soviet Union and her bloc allies that the Canadians have certainly been some of our best friends and have done things for us we could not do for ourselves. And I have been very grateful for that, and I have appreciated the chance to tell you so here, in a public meeting in the United States.

Finally, I have watched your "Morning Hours" in Ottawa, or question hour, or whatever you call it, and it is unique and enlightening and entertaining. I am very glad you are here.

And now, let us turn to the next witness, Dorothy Crawford, of Scottsdale, Ariz., representing the Association for Children with Learning Disabilities.

We have your full statement, Mrs. Crawford. We will make it a part of the record in full and invite you to summarize it in whatever way you wish.

Mrs. **Crawford**. Thank you, Mr. Chairman. It is my intent to highlight the written testimony today.

I am representing the Association for Children with Learning Disabilities, a nonprofit, parent-oriented, volunteer organization, which has State affiliates in every State in the United States, with some 800 chapters.

I am on the national organization's Board of Directors which is the governing body, and I serve on it because I am a parent of two children with learning disabilities.

My major activity at the national level is chairing the Advocacy Committee.

I would just like to make brief mention of how much our association truly appreciates the efforts of this committee on behalf of all handicapped children, particularly in spite of the fact some very important activities are going on before the full Senate, you are taking time to hear us speak.

I want to highlight certain parts of the written testimony the association presented. The highlights will be in respect to concerns, comments, and recommendations from ACLD.

First of all, we have one recommendation that we would like to make for a change in the statute. Since so many of the children that have learning disabilities are mainstreamed, probably more than other handicapped children, we feel this is a very important recommendation. Rather than for in-service training to be only available for general education and people in that area, we would like to recommend the following statute change. In order for a State to qualify for monetary assistance, the State shall demonstrate to the Commissioner that appropriate in-service training is required, rather than just available, for all administrators, teachers, related service personnel who are involved with the education of handicapped children.

In other areas of implementation of Public Law 94-142, we have recognized and defined a number of areas of concern for the education of children with learning disabilities. First of all, under multicategorical placement—this is one of our very important concerns—since children with learning disabilities require very special kind of services with highly trained personnel to remediate their learning disabilities, we are, in the majority of instances, opposed to multicategorical placement, be it in resource rooms or self-contained classrooms. We are convinced that every child with a learning disability should be taught by teachers trained and certified to teach children with learning disabilities; for programs for children with learning disabilities to include the full range of services specified in Public Law 94-142; and that the content of instruction should approximate that for all children with the methods of instruction matched to each learning disabled child's unique learning needs.

Therefore, we are opposed to the use of multicategorical rooms in the remediation of the child with learning disabilities except in cases of certain, carefully justified programmatic circumstances.

On evaluation, we have two concerns, or two parts. The first is relating to referrals of children for evaluation, and the second is with the evaluation process. We see reluctance on the part of some teachers and administrators to refer for evaluation children who might have learning disabilities. We also hear of many States who are now applying a formula method for determining eligibility for placement in learning disability programs.

The Office of Special Education has sent out a number of DAS information bulletins to the State directors of special education and State coordinators. In these bulletins, the Office of Special Education has attempted to clarify the application of a formula. However, we have found that bulletins clarifying regulations do not have the same impact as the regulations, and despite the clarifications, practices are still being applied which run counter to the bulletins.

We have also found that when making placement decisions, there is little in the evaluation process which would assist in or suggest making a placement recommendation into a vocational education program.

Therefore, we recommend there be an amendment so that all DAS bulletins and policy clarification papers are entered into the rules. We also further recommend that vocational aptitude or other appropriate vocational assessment be included in the evaluation procedures of adolescent and young adults who are suspected of having learning disabilities.

We further recommend another change in the rules for evaluation procedures, and that is to revise the statement where the words are, "impaired sensory, manual, or speaking skills", to read, "handicapping condition or conditions", since in the present form, the statement does not properly operationalize all of the possible handicapping conditions of persons with specific learning disabilities.

Under procedural safeguards, the role of the Office of Civil Rights relating to implementation of Public Law 94-142 is confusing to many parents. ACLD recommends inclusion of a section in the rules of Public Law 94-142 which explains under what circumstances an appeal to the Office of Civil Rights is appropriate.

Regarding due process, we recommend that public funds be made available for legal fees to parents of the handicapped in the same manner that these funds are available to local education agencies. We feel in the present form where local education agencies have public funds available for attorney fees, that this is a highly discriminatory situation to parents and the handicapped.

Regarding monitoring, we believe the regulations should include a plan for monitoring compliance between the periods of local education agencies, State educational agencies, and the Office of Special Education's formal monitoring activities. Such a plan should call for the establishment of Special Education advisory councils within the local areas, one responsibility of which would be to generally assess compliance. A local advisory council must include parent participation, a component now missing in present monitoring requirements.

We recommend a change in the rules to provide for the establishment of local Special Education Advisory Councils with parent representation, whose responsibilities would be to: one, assess and monitor compliance of applicable State and Federal laws; two, to assist in the development of the local annual plan, and three, to provide advice to the local education agencies on unmet needs.

On the IEP and Surrogate Parents, we are still concerned about the role of the parents at the IEP meetings. All too often, the parent does not know how to participate, and it may be helpful to have a parent handbook developed which should be given to the parent at the time of evaluation so that the parent can be more adequately prepared for the IEP meeting.

In conclusion, the statement as written and as I have highlighted today reflects to ACLD the most critical issues relating to Public Law 94-142.

Again, the association would like to express our appreciation to this subcommittee for the opportunity of being here today, but most of all, for your compassion, concern and dedication for the welfare of all handicapped children.

Thank you, Senator.

[The prepared statement of Mrs. Crawford and the questions and responses referred to follow:]

ACLD

An Association For Children and Adults With Learning Disabilities

4156 Library Road • Pittsburgh, PA 15234 • 412 / 341-1515 • 412 / 341-8077

National Officers

PRESIDENT
ROBERT REED

I VICE PRESIDENT
MARTHA KASSES

II VICE PRESIDENT
JOHN WACKER

III VICE PRESIDENT
ANNE FLEMING

SECRETARY
SHARI EDWARDS

TREASURER
KATHARINE TILLOTSON

BOARD APPOINTMENT
DOROTHY CRAWFORD

IMMEDIATE PAST PRESIDENT
BETTY SADER

National Directors

JERRY ASCHENBRENNER
ALLAN BERMAN
RONALD CANTWELL
BARBARA CHESLER
TRINA CRAIG
DOROTHY DORIA
GAIL DUANE
PATSY FORDYCE
SANDRA HARRISON
LOUISE HULLINGER
JERRY ISAACS
ANN JAMES
VERNON LEWIS
BETTY LOCKETT
FRAN RICE
JACKIE SIPPLE
JANE WOLFE

Professional Advisory Committee

CHAIRMAN
SYLVIA O. RICHARDSON, M.D.
HONORARY CHAIRMAN
SAMUEL KIRK, Ph.D.

A. JEAN AYRES, Ph.D.
WILLIAM L. BYRNE, Ph.D.
JAMES C. CHALFANT, Ed.D.
WILLIAM M. CRUICKSHANK, Ph.D.
HYMAN GARDSBANE, O.D.
THOMAS GILHOOL, Esq.
NORRIS G. HARING, Ph.D.
DORIS JOHNSON, Ph.D.
JANET LERNER, Ph.D.
REED MARTIN, Esq.
JEANNE McRAE McCARTHY, Ph.D.
J. GERALD MINSKOFF, Ed.D.
MARIO A. PASCALE, Ed.D.
MARGARET A. SCHEFFELIN, Ph.D.
LARRY B. SILVER, M.D.
BERT KRUGER SMITH
ELEANOR C. WESTHEAD, Ph.D.

Youth and Adults Section

CHAIRMAN
SUSAN HASTINGS

National Executive Director

MRS. JEAN PETERSEN

TO: SENATE SUBCOMMITTEE ON THE HANDICAPPED

JENNINGS RANDOLPH, CHAIRMAN

FROM: DOROTHY CRAWFORD
ACLD BOARD OF DIRECTORS

WRITTEN TESTIMONY ON P. L. 94-142

July 29, 1980

A National Non-Profit Organization

I am Dorothy Crawford representing ACLD, an association for children and adults with Learning Disabilities. ACLD is a non-profit organization with some 800 chapters in all 50 states. We are a parent oriented volunteer association, dedicated to helping the child and adult with specific learning disabilities. Our membership consists of parents, individuals with learning disabilities, professionals and interested persons. I serve on the ACLD Board of Directors; the major national committee I chair is the ACLD Advocacy Committee. Also, I am a parent of two children with learning disabilities.

ACLD is deeply indebted to ths Chairman and members of this Senate Subcommittee for your continuing efforts on behalf of handicapped persons, including children and adults with learning disabilities. ACLD has been before this committee on many occasions. We have always gone away reassured by the sincere concern and dedication shown for our children.

ACLD is especially grateful for the opportunity to participate in these hearings on PL 94-142 and our input, though brief, hopefully will be particularly significant. As parents, we represent the largest group of handicapped served by PL 94-142. Learning Disabilities has the unique position of special attention in the law and in the regulations. And as parents, we not only have observed but have been part of the implementation of PL 94-142.

ACLD has one important recommendation to make concerning the phrasing of the law. With this one exception, we believe the law is an excellent one, and one in which this subcommittee should be exceedingly proud. Our recommendation is made in response to the many parent members of ACLD who have stated that often programs commensurate with their children's needs are not being provided (in part, at least) due to poor attitudes, misunderstanding, and lack of ability demonstrated by school administrators. This is especially true for principals and the regular classroom teachers, since children with learning disabilities are more frequently mainstreamed than other handicapped children. ACLD, therefore, respectfully requests the following statute change:

> In order for a state to qualify for monetary assistance the state shall demonstrate to the Commissioner that appropriate in-service training be required (rather than just available) for all administrators, teachers, related service personnel who are involved with the education of handicapped children.

In other issues of implementation, ACLD has recognized and defined a number of areas of concerns for the education of children with learning disabilities. We have participated in the BEH national and regional meetings on PL 94-142 and at other meetings with the BEH officials to point out our concerns. We have generally been pleased with the response BEH has made to us. BEH clarification bulletins have addressed some of the concerns we have expressed.

But some problems still persist. While we recognize the complexity of the issues faced by the local and state education agencies in trying to implement PL 94-142, we are expressing priority concerns here in the hope you will use your skills to alleviate some of the major problems our children are facing.

Multicategorical Placement

One of the most important concerns to us is in regard to the placement of students with learning disabilities into multicategorical resource rooms or self-contained classrooms. A survey of our 60,000 plus membership indicates much dissatisfaction over this widespread practice. All too often, students with learning disabilities are given teachers who are not trained or certified to teach students with learning disabilities and despite an IEP, the education program in these multicategorical classrooms are not matched to the unique learning needs of each child in the room.

ACLD is convinced that (1) every child with a learning disability should be taught by teachers trained and certified to teach children with learning disabilities; (2) programs for children with learning disabilities should include the full range of services specified in PL 94-142, matching the intensity of the services to the severity of the child's disability; (3) the content of instruction (curriculum) should approximate that for all children with the methods of instruction matched to each learning disabled child's unique learning needs.

These conditions are not generally met in the classroom where students with learning disabilities are grouped together with children who have other types of handicaps and whose educational needs and modes of remediation are necessarily different in kind, emphasis, and content. ACLD is opposed to the use of multicategorical rooms in the remediation of the child with learning disabilities, except in cases of certain carefully justified programmatic circumstances.

Evaluation

A second important concern is in respect to the evaluation of children suspected to have learning disabilities. Our concern is divided into two parts, the first relating to referrals of children for evaluation and the second is with the evaluation process.

We see a reluctance on the part of some teachers and administrators to refer for evaluation children who might have learning disabilities. The problem is noticeably greater on the secondary level. One reason for these fewer referrals may be related to a reluctance to face the greater responsibility and details placed upon the regular teacher and principals when more learning disabled students are identified.

Regarding the evaluation process, we hear of many states which are applying a formula method for determining eligibility for placement in learning disabilities programs. On January 29, 1980, BEH sent a DAS Information Bulletin #54 to State Directors of Special Education, State Part B Coordinators and State PL 89-313 Coordinators. In the bulletin, BEH attempted to clarify the application of a formula.

Also, in BEH bulletin, DAS Bulletin #9 of April 19, 1978, clarified the use of a specialist on the evaluation team knowledgeable in the area of learning disabilities when learning disabilities are suspected.

It has been our experience that the BEH clarification bulletins do not have the same impact as the regulations. Despite the clarifications, practices are still being applied which run counter to the bulletins.

We have also found that when making placement decisions, there is little in the evaluation process which would assist in or suggest making a placement recommendation into a vocational education program.

ACLD, therefore, recommends an amendment so that all DAS Bulletins and policy clarification papers are entered into the rules. We also recommend that vocational aptitude or other appropriate vocational assessment be included in the evaluation procedures of adolescent and young adults who are suspected of having learning disabilities.

We further recommend another change in the rules for Evaluation Procedures. The words, "impaired sensory, manual, or speaking skills" do not properly operationalize all of the possible handicapping conditions of a person with specific learning disabilities. Therefore, this statement should be changed to read, "handicapping condition or conditions."

Procedural Safeguards

The role of the Office of Civil Rights relating to implementation of PL 94-142 is confusing to many parents. Parents do not know when, how or under what circumstances they should appeal to the OCR. For example, situations have been reported to ACLD where the LEA has refused to grant an impartial hearing; where tests have been used which reflect handicapping conditions; where the LEA has refused to evaluate a child suspected by the parents of having a disability; where parent's and children's rights have not been explained, etc.

ACLD recommends the inclusion of a section in the rules of PL 94-142 which explains under what circumstances an appeal to OCR is appropriate.

Due Process

In the case where parents elect to utilize the Due Process procedure, it is usually necessary to engage an attorney to represent the child and present the case. For many parents legal fees are beyond their financial capacities. On the other hand, LEA's have attorneys whose fees are paid through public funds. This creates a situation which is highly discriminatory to parents and the handicapped.

ACLD recommends that public funds be made available for legal fees to parents of the handicappod in the same manner that these funds are available to LEA.

Monitoring

ACLD believes the regulations should include a plan for monitoring compliance between the periods of LEA, SEA, and BEH formal monitoring activities. Such a plan could call for the establishment of LEA Special Education Advisory Councils, one responsibility of which would be to generally assess compliance. A local advisory council must include parent participation, a component now missing in present monitoring requirements.

ACLD recommends a change in the rules to provide for the establishment of local Special Education Advisory Council, with parent representation, whose responsibilities would be to: (1) assess and monitor compliance of applicable state and federal laws; (2) assist in the development of the local annual plan; and (3) provide advice to the LEA on unmet needs.

IEP and Surrogate Parents

ACLD has reviewed the BEH policy papers on the IEP and Surrogate Parents. These policies adequately respond to some of the concerns ACLD has previously expressed to the BEH. As an example, one of ACLD's concerns related to the inclusion of related services such as adaptive physical education and vocational education in the IEP. These are clearly and adequately addressed in the IEP policy paper. However, we are still concerned about the role of the parent at the IEP meetings. All too often the parent does not know how to participate and it may be helpful to have a parent handbook developed which should be given to the parent at the time of the evaluation, so that the parent can be more adequately prepared for the IEP meeting. Perhaps with this method, more appropriate services can be provided for certain handicapped. Many persons need vocational educational training to ensure productive adulthood, indeed, to ensure survival in some cases.

In conclusion, the above statements reflect the most critical issues relating directly to PL 94-142 seen by ACLD at this time. ACLD again expresses its appreciation to this Subcommittee for the opportunity to be here today; but most of all, for your compassion, concern, and dedication for the welfare of all handicapped children.

Thank you.

SUMMARY

ACLD recommends the following revisions or modifications to the Act and/or the Rules and Regulations in order to effectively implement the law:

PL 94-142

In order for a state to qualify for monetary assistance, the state shall demonstrate to the Commissioner that appropriate in-service training be required (rather than just available) for all administrators, teachers, related service personnel who are involved with the education of handicapped children.

Rules and Regulations

A. Multicategorical Placement:

ACLD is convinced that (1) every child with a learning disability should be taught by teachers trained and certified to teach children with learning disabilities; (2) programs for children with learning disabilities should include the full range of services specified in PL 94-142, matching the intensity of the services to the severity of the child's disability; (3) the content of instruction (curriculum) should approximate that for all children with the methods of instruction matched to each learning disabled child's unique learning needs. ACLD is opposed to the use of multicategorical rooms in the remediation of the child with learning disabilities, except in cases of certain carefully justified programmatic circumstances.

B. Evaluation:

(1) That vocational aptitude or other appropriate vocational assessment be included in the evaluation procedures of adolescents and young adults who are suspected of having learning disabilities; and (2) change the phrase, "impaired sensory, manual or speaking skills" to read, "handicapping condition or conditions."

C. Procedural Safeguards:

A section be included in the rules to explain when an appeal to OCR is appropriate.

D. Due Process:

Public funds be made available for legal fees to parents of the handicapped in the same manner that these funds are available to LEA's.

E. Monitoring:

Local Special Education Advisory Councils, with parent representation, be established to (1) assess and monitor compliance of applicable state and federal laws; (2) assist in the development of the local annual plan; and (3) provide advice to the LEA on unmet needs.

F. IEP and Surrogate Parents:

Clarify the parents' role, responsibilities and rights in a handbook to enable more effective, productive and meaningful IEP's.

ACLD

An Association For Children and Adults With Learning Disabilities

4156 Library Road • Pittsburgh, PA 15234 • 412 / 341-1515 • 412 / 341-8077

AUG 23

August 13, 1980

Received
Date 8 - 17 - 80
Subcommittee on

National Officers

PRESIDENT
ROBERT TODD

I VICE-PRESIDENT
MARTHA KABBES

II VICE PRESIDENT
JOHN WACKER

III VICE PRESIDENT
ANNE FLEMING

SECRETARY
SHARI ROBINSON

TREASURER
KATHARINE TILLOTSON

BOARD APPOINTMENT
DOROTHY CRAWFORD

IMMEDIATE PAST PRESIDENT
BETTY BADER

National Directors

JERRY ASCHENBRENER
ALLAN BERMAN
RONALD CANTWELL
BARBARA CHESLER
TRINA CRAIG
DOROTHY DORIA
GAIL DUANE
PATSY FORDYCE
SANDRA HARRISON
LOUISE HULLINGER
JERRY ISAACS
ANN JAMES
VERNON LEWIS
BETTY LOCKETT
FRAN RICE
JACKIE SIPPLE
JANE WOLFE

Professional Advisory Committee

CHAIRMAN
SYLVIA O. RICHARDSON, M.D.
HONORARY CHAIRMAN
SAMUEL KIRK, Ph.D.

A. JEAN AYRES, Ph.D.
WILLIAM L. BYRNE, Ph.D.
JAMES C. CHALFANT, Ed.D.
WILLIAM M. CRUICKSHANK, Ph.D.
HYMAN GARDSBAUM, O.D.
THOMAS GILHOOL, Esq.
NORRIS G. HARING, Ph.D.
DORIS JOHNSON, Ph.D.
JANET LERNER, Ph.D.
REED MARTIN, Esq.
JEANNE McRAE McCARTHY, Ph.D.
J. GERALD MINSKOFF, Ed.D.
MARIO A. PASCALE, Ed.D.
MARGARET A. SCHEFFELIN, Ph.D.
LARRY B. SILVER, M.D.
BERT KRUGER SMITH
ELEANOR C. WESTHEAD, Ph.D.

Youth and Adults Section

CHAIRMAN
SUSAN HASTINGS

National Executive Director

MRS. JEAN PETERSEN

Senator Jennings Randolph
Chairman, Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Randolph:

This letter is in response to the questions you posed resulting from the testimony I presented on behalf of ACLD at the oversight hearing on Public Law 94-142.

Question #1. You note that appropriate programs are not being provided to handicapped children and that this is in part due to poor attitudes, misunderstanding and lack of ability demonstrated by school administrators and you recommend that inservice training be required for all administrators, teachers and related services personnel. Could you describe what you would view as a good inservice training program?

Response: At the present time, SEA's have good inservice training programs. The point is, however, the programs are only available to General Education staff rather than required. Requiring school administrators, teachers and related school personnel to attend and receive the inservice training (for educating the handicapped) provided by the SEA would be most cost effective. More importantly, this requirement would be instrumental in providing appropriate services to the handicapped in the regular classroom (mainstream).

Question #2. You also state that every child with a learning disability should be taught by teachers trained and certified to teach children with learning disabilities. How do you feel this goal would be implemented at the secondary school level?

A National Non-Profit Organization

Response: It is essential for all elementary or secondary level LD students to have a teacher trained and certified in the field of LD. This LD Specialist would be the primary person to design the LD student's total program and coordinate the program with other school personnel involved in the child/adolescent's academic mainstream arena. Further, it is a waste of money, human resources, and detrimental to the well-being of LD individuals in self-contained classrooms or resource rooms to receive services from teachers who do not have the expertise and skills in LD.

To implement the goal referred to in the question, teachers in self-contained or resource rooms would be required to train in the field of the handicapping area of their choice, have certification in the same area and provide services to the children who have that particular handicap. It should be noted that LD children do not learn in the so-called normal prescribed manner; nor do they process information in the normal manner. Because of this particular kind of handicapping condition, it takes one with the knowledge and expertise to provide appropriate services.

Question #3. Most of the recommendations given in your testimony appear valid but costly. Other witnesses have identified the high cost of programs for handicapped children as a major problem. If additional funds were to become available, what would be your 1st, 2nd and 3rd priorities for the use of these funds?

Response: It is unfortunate that educating the handicapped is so costly initially. It is good to keep in mind that appropriate education for the handicapped pays priceless future dividends.

Recommendations given in my testimony by and large would create only minimal increases in costs. For example, the inservice training recommendation would not create additional costs as the inservice training is now available but not required. Certainly it seems prudent to make use of the time, effort and energy expended on inservice by including regular classroom teachers and school administrators on a mandatory basis.

Priorities for the use of additional funds or even present funds are:

1. Abolish multicategorical placement in resource rooms and/or self-contained classrooms.

Senator Jennings Randolph
Page 3
August 13, 1980

2. Include vocational aptitude and other appropriate vocational assessments in the evaluation of adolescents and young adults who are suspected of having learning disabilities.

3. Establish LEA Special Education Advisory Councils to generally assess and monitor compliance. The local councils must include parent participation, a component now missing in present monitoring requirements.

Once again, Senator Randolph, thank you for inviting and permitting ACLD to present our concerns and comments to your committee regarding LD persons. We are grateful and most appreciative.

Warm regards,

Dorothy Crawford

Dorothy Crawford

DC:rg
cc: ACLD Governmental Affairs Committee
Jean Petersen
Robert Reed

Senator STAFFORD. Thank you very much, Mrs. Crawford. We appreciate your appearance here. There may be some questions for you which Senator Randolph and I well may join in submitting to you in writing for responses, if that is agreeable.

We wish the Canadian delegates well in the rest of their stay here.

The next witness will be Mrs. Jacqueline Mendelsohn, of Silver Spring, Md., who represents the International Association of Parents of the Deaf.

Mrs. MENDELSOHN. Thank you.

My name is Jacqueline Z. Mendelsohn. I am the executive director of the International Association of Parents of the Deaf and the parent of a profoundly deaf 11-year-old boy.

My testimony is based on countless conversations with other parents of hearing impaired children.

The significance of Public Law 94-142, the Education for All Handicapped Children Act, cannot be questioned. A law which provides free, appropriate education for all handicapped children has enormous impact, both on handicapped children and their families.

Public Law 94-142 tells parents, "You have the right to participate, to be involved, to have an opinion, to be informed." Because of this law, the handicapped child is no longer a second priority in public education. Parents, for the first time, are given the right to participate in the decisionmaking process regarding their child's education. Section 121a of Public Law 94-142 clearly states the level of involvement for parents in determining their child's educational placement and plan.

I am here to ask you to resolve the problems parents of hearing impaired children face in relation to the law.

I can state categorically that parents remain uninformed about their rights and their child's rights accorded by the law. The vast amount of materials relating to Public Law 94-142 disseminated to State educational agencies and local educational agencies does not filter down to parents. Inadequate information leads to inadequate decisions relating to the education of a hearing impaired child and his or her unique needs.

Because of inadequate information, parents are not equals on the educational decisionmaking team. Information and education are necessary for parents to understand their rights as stated in the law. The law requires a comprehensive system of personnel development for support personnel. There is no question that parents are key support personnel. State and local educational agencies have not adequately trained parents to fulfill their responsibilities required by the law.

The term, "most appropriate education," as it applies to the education of hearing impaired children is highly controversial. This poorly explained and frequently misinterpreted area of the law causes grave concern for parents who are inadequately informed. Parents are rarely aware of the continuum of alternate education plans available for the hearing impaired child. Too often, they are presented with a hierarchy of choices, ranging from "best"—public school and mainstreaming—to "worst"—special school, segregated classroom.

It is vital for parents and schools to make placement decisions based on the specific needs of each individual child. Consideration must be given to the isolation which hearing impaired children may experience in a mainstreamed environment because of the communication barrier. The least restrictive environment for a hearing impaired child is that environment which is most appropriate, most enriching, and most conducive for overall growth.

Inadequate notification of meetings for the individual education plan for their child is another stumbling block for parents. Because the law does not specify "adequate" notice, parents frequently must cope with little time to prepare themselves for the IEP meeting. Often, the IEP is complete when the parents arrive at the meeting, and they are simply asked to sign it. This is clearly against the law which mandates that parents participate in the development of the individual education plan of their child.

The right for parents to challenge inappropriate educational decisions through due process is stated in the law. Many parents have no knowledge of that right because the SEA's and LEA's are not informing them. Due process has proved to be costly, time-consuming, and at times an unnecessary action initiated because of inadequate information.

Unclear definition of "most appropriate education;" inadequate notification of IEP meetings; preprepared IEP's; and most importantly, lack of recognition of parents' role, are all areas in which parents have been denied their rights. This has led to the isolation of parents, preventing them from being participants on the decisionmaking team mandated by Public Law 94-142.

Therefore, the International Association of Parents of the Deaf recommends: (1) a parent education program explaining parent rights and responsibilities under Public Law 94-142 must be provided to parents once a year by the local education agency; (2) notification of an IEP meeting must be given to parents 30 days in advance; and (3) most appropriate education must be defined as a continuum, rather than a hierarchy of educational alternatives.

The family is a vital link in the education of the whole child. Parents of hearing impaired children across the United States are anxious to share their expertise as equal members of the IEP team. To do so, they must be fully informed about their rights and responsibilities. The International Association of Parents of the Deaf stands ready to help in any way possible.

Thank you.

[The prepared statement of Mrs. Mendelsohn and the questions and responses referred to follow:]

Summary

Testimony on Public Law 94-142

International Association of Parents of the Deaf

July 29, 1980

Unclear definition of "Most Appropriate Education"; inadequate notification of IEP meetings; pre-prepared IEPs; and most importantly, lack of recognition of parents' role are all areas in which parents have been denied their rights. This has led to the isolation of parents, preventing them from being participants on the decision-making team mandated by Public Law 94-142.

Therefore, the International Association of Parents of the Deaf recommends:

a. A Parent Education Program explaining parent rights and responsibilities under P.L. 94-142 must be provided to parents once a year by the Local Education Agency.

b. Notification of an IEP meeting must be given to parents 30 days in advance.

c. Most appropriate education must be defined as a continuum rather than a hierarchy of educational alternatives.

The family is a vital link in the education of the whole child. Parents of hearing impaired children across the United States are anxious to share their expertise as equal members of the IEP team. To do so they must be fully informed about their rights and responsibilities. The International Association of Parents of the Deaf stands ready to help in any way possible.

Thank you.

Jacqueline Z. Mendelsohn
Executive Director
International Association of
Parents of the Deaf
814 Thayer Avenue
Silver Spring, MD 20910
301-585-5400

Testimony on Public Law 94-142

International Association of Parents of the Deaf

July 29, 1980

My name is Jacqueline Z. Mendelsohn. I am the Executive Director of the International Association of Parents of the Deaf, and the parent of a profoundly deaf eleven year old boy. My testimony is based on countless conversations with other parents of hearing impaired children.

The significance of P.L. 94-142, the Education for All Handicapped Children Act, cannot be questioned. A law which provides free appropriate education for all handicapped children has enormous impact -- both on handicapped children and their families.

Public Law 94-142 tells parents "you have the right to participate, to be involved, to have an opinion, to be informed." Because of this Law, the handicapped child is no longer a second priority in public education. Parents, for the first time, are given the right to participate in the decision making process regarding their child's education. Section 121a (224, 121a 414) of P.L. 94-142 clearly states the level of involvement for parents in determining their child's educational placement and plan.

I am here to ask you to resolve the problems parents of hearing impaired children face in relation to the Law.

I can state categorically that parents remain uninformed about their rights and their child's rights accorded by the Law. The vast amount of materials relating to P.L. 94-142 disseminated to State Educational Agencies and Local Educational Agencies does not filter down to parents. Inadequate information leads to inadequate decisions relating to the education of a hearing impaired child and his/her unique needs. Because of inadequate information, parents are not equals on the educational decision making team.

Information and education are necessary for parents to understand their rights as stated in the Law. The Law requires a comprehensive system of personnel development for support personnel (241) (c) (3). There is no question that parents are key support personnel. State and Local Educational Agencies have not adequately trained parents to fulfill their responsibilities required by the Law.

The term "Most Appropriate Education" as it applies to the education of hearing impaired children is highly controversial. This poorly explained and frequently misinterpreted area of the Law causes grave concern for parents who are inadequately informed. Parents are rarely aware of the CONTINUUM of alternative education plans available for their hearing impaired child. Too often they are presented with a hierarchy of choices, ranging from "best" (public school, mainstreaming) to "worst" (special school, segregated classrooms). It is vital for parents and schools to make placement decisions based on the specific needs of each individual child. Consideration must be given to the isolation which hearing impaired children may experience in a mainstreamed environment because of the communication barrier. The least restrictive environment for a hearing impaired child is that environment which is most appropriate, most enriching, and most conducive for overall growth.

Inadequate notification of meetings for the Individual Educational Plan for their child is another stumbling block for parents. Because the Law does not specify "adequate" notice, parents frequently must cope with little time to prepare themselves for the IEP meeting. Often the IEP is complete when the parent arrives at the meeting and they are simply asked to sign it. This is clearly against the Law which mandates that parents participate in the

DEVELOPMENT of the Individual Educational Plan of their child.

The right for parents to challenge inappropriate educational decisions through Due Process is stated in the Law (613) (a) (13) (A). Many parents have no knowledge of that right because the SEAs and LEAs are not informing them. Due Process has proved to be costly, time consuming, and at times an unnecessary action initiated because of inadequate information.

Unclear definition of "Most Appropriate Education"; inadequate notification of IEP meetings; pre-prepared IEPs; and most importantly, lack of recognition of parents' role are all areas in which parents have been denied their rights. This has led to the isolation of parents, preventing them from being participants on the decision-making team mandated by Public Law 94-142.

Therefore, the International Association of Parents of the Deaf recommends:

a. A Parent Education Program explaining parent rights and responsibilities under P.L. 94-142 must be provided to parents once a year by the Local Education Agency.

b. Notification of an IEP meeting must be given to parents 30 days in advance.

c. Most appropriate education must be defined as a continuum rather than a hierarchy of educational alternatives.

The family is a vital link in the education of the whole child. Parents of hearing impaired children across the United States are anxious to share their expertise as equal members of the IEP team. To do so they must be fully informed about their rights and responsibilities. The International Association of Parents of the Deaf stands ready to help in any way possible.

Thank you.

Jacqueline Z. Mendelsohn
Executive Director
International Association of
Parents of the Deaf
814 Thayer Avenue
Silver Spring, MD 20910
301-585-5400

QUESTIONS FOR JACQUELINE MENDELSOHN

1. You said that sometimes the IEP is complete when parents arrive at the meeting and they are simply asked to sign it. Did this situation occur with reference to your child's IEP?
2. You suggested that local and State educational agencies have not been adequately informing parents about their rights and their child's rights under Public Law 94-142. Has your organization been involved in trying to create greater parent awareness?
3. Parent education relating to rights and responsibilities under P.L. 94-142 would also appear to be a proper responsibility for parent associations. Would you please address this issue and discuss the relative roles of public agencies and parent associations in this regard.
4. If the regulations required 30 days notice for an IEP meeting, would this requirement also introduce serious delays in providing services to children?

I A
P D International Association of Parents of the Deaf, Inc.

8-8

August 5, 1980

Senator Jennings Randolph
Chairman
Subcommittee on the Handicapped
Room 4230 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Randolph:

Here are the responses to your questions from the testimony presented at oversight hearing on Public Law 94-142 on July 29, 1980

Thank you for your time and attention to the needs of the handicapped.

1. In the case of my child's IEP, the Plan was always developed with myself and my husband present. However, I have spoken to parents, who upon arriving at a Residential school on Parent's day found long tables, with IEP's on them, alphabetically arranged. Each parent as they went through the line to register their child, signed their IEP. Other parents have talked of a 15 minute IEP meeting composed of the school staff reading the completed IEP and the parents signing the Plan.

2. The International Association of Parents of the Deaf is working very hard to inform parents of their rights and their child's rights. Through IAPD Position Papers, coordination with Gallaudet College's Task Force on P.L. 94-142, articles in our newsletter, The ENDEAVOR, and parent workshops, provided locally and Nationally. Our last convention focused on P.L. 94-142. We are trying to reach as many parents of hearing impaired children as possible. However, our numbers are small, and we do not have ability to reach as many parents as have public agencies, particularly schools.

3. Parent Education is an appropriate responsibility for parent associations. However, as a parent association, we do not have knowledge of every parent who has a hearing impaired child.

Cooperation between State and Local Education Agencies and parent associations

814 THAYER AVE • SILVER SPRING, MARYLAND 20910 • PHONE 301-585-5400

would greatly increase the impact and accessibility of parent education. Local Parent Groups, under the guidance of National Parent Associations could provide Parent Education in regards to P.L. 94-142. SEA and LEA would locate the parents and the services needed, a wide population will be reached. This cooperation can be established by:

1. Hiring a parent coordinator
2. By having an advisory committee composed of a Representative of the State Educational Agencies, Local Educational Agency, and parents.
3. By providing funding specifically for annual Parent Education Programs.
4. Clarifying the needs of Parents and schools.

4. Schools schedule IEP meetings well in advance of the date in order to plan for substitutes, teacher planning time and pre-IEP meetings. Parents have the same right as school personnel to plan in advance for the IEP meeting. 30 days notice would not cause delays in providing services to children. Services for handicapped children cannot be provided until the IEP has been signed and the IEP cannot be signed unless parents are notified of a time and and date of a meeting. Thirty days notice would not delay the IEP, merely give adequate notice to parents.

Sincerely,

Jacqueline Z. Mendelsohn
Executive Director

JZM:mmh

Senator **Stafford**. Thank you very much, Mrs. Mendelsohn.

Your remarks about the failure of information to get to parents of deaf children—do you have any specific suggestions beyond the paper as to how that information might reach you?

Mrs. **Mendelsohn**. I would suggest that the State educational agencies and the local educational agencies have parents participate on advisory committees composed of representatives of the school on the State, local, and district levels, and that parents and schools take the responsibility at PTA meetings, and at registration on first day of school that all parents are supplied with the adequate information.

Senator **Stafford**. That seems to be a very vital failure in the chain.

Mrs. **Mendelsohn**. Information is available in libraries and in principals' offices. It does not seem to get directly into the hands of parents.

Senator **Stafford**. All right, thank you.

That concludes the panel. I want to express the appreciation of the subcommittee to all of the members who have participated in it, and to once again point out that unfortunately, Senator Randolph and I are simultaneously involved not only here, but in a rather important bill on the disposition of nuclear waste, pending in the Senate itself.

Thank you very much.

The next witness is from my own State of Vermont. I am more than happy to welcome Fran Rice, advocate and legislative chairman of the Vermont Association of Learning Disabilities as a witness before this committee.

We will put your entire statement in the committee record and invite you to summarize it, if you would, please.

STATEMENT OF FRANCIS R. RICE, ADVOCATE AND LEGISLATIVE CHAIRMAN, VERMONT ASSOCIATION OF LEARNING DISABILITIES, MONTPELIER, VT.

Ms. **Rice**. Very good, thank you, Senator Stafford and members of the committee.

I greatly appreciate the opportunity to come before the committee to share with you my observations and concerns regarding the implementation of Public Law 94-142, the Education of the Handicapped Act. I shall excerpt from my prepared statement.

My name is Frances Rice, and I am from Montpelier, Vt. I am a product of a public school experience that at best can be described as miserable, because I was an unrecognized dyslexic. It was only through the intervention of some knowledgeable professors and my own determination that I became a graduate of Tufts University.

I am also a parent of six children, three of whom are moderately affected by specific learning disabilities, sufficient to have made their school years often difficult and frequently frustrating not only for them but for us as their parents. Neither they nor I benefited from the Federal legislation I champion as an advocate for the specific learning disabled population in Vermont.

By way of introduction, I am a past president of the Vermont Association for Learning Disabilities, am currently a member of the specific learning disability task force for the State of Vermont, and I serve on the national board of directors for the Association for Children and Adults with Learning Disabilities.

Being a dyslexic, a parent of SLD children and an advocate has given me a perspective many educators have not experienced and provides me with an intimate look at the implementation of Public Law 94-142, as well as section 504 of the Rehabilitation Act of 1973.

I support the traditional classification system as detailed in Public Law 94-142, and I hope that my testimony will illustrate the severe problems generated when classification regulations are allowed to be circumvented.

First of all, classification is the law. Public Law 94-142 mandates that full procedural safeguards be established and maintained in order to protect a child and his parents in the identification, evaluation, and educational placement process.

Unfortunately, some States such as Vermont have been allowed to take a noncategorical approach to Public Law 94-142. This has caused inaccurate diagnosis of the handicapping condition, entry into special education of children who do not meet the Federal definition criteria resulting in an inflated special education budget, and inappropriate and inadequate educational programs.

The classification of handicapping conditions in Public Law 94-142 eliminates the confusion between children poorly served and the handicapped child. Classification allows us to know individual needs and to design programs that fit the child, rather than fitting the child into an existing program. The noncategorical approach sets the stage for budgetary escalation and the growth of a burgeoning parallel educational system that competes with regular education for the same moneys.

When we permit poorly served children to be eligible for the expensive services of special education then we now see that we are spending special education moneys to do the job we thought regular education was to accomplish, while draining the resources for those truly handicapped.

Public Law 94-142 was not designed to shore up sagging educational failures. We urge a return to the intent of Public Law 94-142, and that it be accomplished through strict adherence to the Federal eligibility requirements.

Vermont's children have been almost exclusively served through the Vermont Consulting Teacher Model at the University of Vermont. This delivery model has been heavily supported by HEW. The key elements of the model, which is a noncategorical model, are behavior modification and task analysis. The philosophy operates on the belief that it is not necessary to understand the cause of a handicapping condition and that learning and performance are the same and do not need different strategies.

We are informed that this undimensional approach can be useful for the mentally retarded and the seriously emotionally disturbed for whom it was originally developed, but this across-the-board approach has been a disaster for the average to bright SLD, now acknowledged to represent our State's largest handicapping condition.

The behavior modification aspect alarms many parents. We do not support the purchasing of our children through the reward system via money, gifts, or the earning of tokens which are redeemable at a store for material items. This manipulation is abhorrent to us, for when a teacher encourages students to learn for a price, she is teaching them that having a price is quite acceptable. This is an abuse of power and insidious in implication. It is to be remembered that the whole business of behavior control is basically a question of power, of conditioning young minds to accept a power authority. Parents thought that it was the responsibility of education to teach children to think independently and wisely for themselves, still a birthright in this country.

I bring the Vermont model to your attention as an illustration that monitoring of federally funded programs is sorely needed. We must open up the existing program to incorporate the many disciplines that contribute to the understanding of children's needs and we must provide our teachers with access to indepth training at both the undergraduate and graduate levels. We need programs that acknowledge that the central nervous system is indeed involved in the acquisition and use of language.

To obtain relief from this problem, knowledgeable SLD parents with the assistance of the Office of Civil Rights and the Vermont Legislature, recently achieved a first step toward rescuing the SLD population in our State. Attached is a memorandum from the director of special education, State of Vermont, issued June 26, 1980, requiring the identification of the SLD through procedures guaranteed in Public Law 94-142.

Monitoring in Vermont has been limited to one of paper monitoring, not program monitoring, and we need both. Monitoring should include a funded training program for parents to assist school districts in monitoring themselves as well as training for parents to monitor their own child's progress. Parents need training to support themselves in disagreements with schools so that costly attorney fees are not necessary at the fair hearing level. Parent groups need readily accessible information and assistance competing for grants through BEH for parent training.

We urge that national policies be developed that will guide the Office of Civil Rights and the Bureau of the Education of the Handicapped when they are jointly involved in overlapping responsibilities under both section 504 and Public Law 94-142. Such policies should hopefully accelerate the response from the agencies to those who wait for their findings long past published time frames.

In our work with the Office for Civil Rights, we have found them responsive and helpful, but they report to us that they are receiving ever-increasing complaints to process with too little staff. Something needs to be done to insure concrete solutions. The framework of the Federal regulations is basically adequate. The problems are stemming from inadequate enforcement at all levels.

It is my firm conviction that Public Law 94-142 has become a catalytic force in causing the public schools to take a good, hard look at themselves and the regular education practices. As Dr. Lieberman has said, "The back to basics movement is not an accident and no bandwagon, but a well-documented need. Special education has become confused with being an answer to the problems of regular education."

Presently, a stumbling block to equal access to education is the adequacy of educational personnel. Section 504 requires that "teachers must be trained in the instruction of persons with the handicap in question. . . ." When classroom teachers do not have access to knowledgeable preservice or inservice or are allowed by choice to ignore the responsibility to participate in any inservice workshops, then the concept of mainstreaming collapses, and we come to acknowledge that mainstreaming is really more a political and social term than an educational reality.

Dr. Richardson succinctly sums it up this way:

> We need to extend the capacity of regular educational personnel so that they can accommodate a broader range of individual differences to prevent learning failures, thereby reducing the need for extensive and expensive special education support. Few teachers have been exposed, much less trained, within the multidisciplinary framework.

In conclusion, and in behalf of the Vermont Association for Learning Disabilities, I again extend our appreciation for the opportunity to come before this committee. We are grateful for the legislation. Do not weaken the regulations or consumer participation. Parents have had to come to the Federal Government for responsiveness.

Thank you.

[The prepared statement of Ms. Rice along with questions and responses and additional material supplied follow:]

PREPARED STATEMENT

OF

FRANCES R. RICE

ADVOCATE

VERMONT ASSOCIATION FOR LEARNING DISABILITIES

JULY 29, 1980

IMPLEMENTATION OF PL 94-142

BEFORE THE U.S. SENATE

SUBCOMMITTEE ON THE HANDICAPPED

CHAIRMAN: JENNINGS RANDOLPH

It is the intent of my testimony to address problems that are surfacting in Vermont in the implementation of PL 94-142 and Section 504 of the Rehabilitation Act of 1973.

I wish to provide the Committee and others who may be interested with an overview of the non-catagorical approach to serving children under these mandates.

We are concerned, as is the Committee, that a public backlash focused upon the mandated regulations is building. We realize that funding for these laws must compete with other equally deserving needs from dwindling tax revenues.

Therefore, in order to help preserve the intent and spirit of the legislation and ensure better fiscal and program accountability, we provide Vermont's experience from the consumers point of view. We urge that Congress tighten up the eligibility standards to conform with those defined in PL 94-142 and call for closer monitoring on the effectiveness of funded programs, from consumers as well as from the educational profession.

The non-catagorical approach stands on shaky grounds and I enclose a statement from the respected Dr. Nicholas Hobbs, 1975.

> "Classification of exceptional children is essential to get services to them, to plan and organize programs and to determine the outcomes of the intervention efforts. We do not concur with the sentiments widely expressed that classification of exceptional children should be done away with. Although we understand that some people advocate the elimination of classification in order to get rid of its harmful effects, their proposed solution oversimplifies the problem. Classification and labeling are necessary to human communication and problem solving; without catagories and concept designators, all complex communicating, and thinking stops. Classification is necessary to open doors of opportunity, to get help for a child, to write legislation, to appropriate funds, to design service programs, to evaluate outcomes, (emphasis mine) to conduct research and to communicate about the problem of an exceptional child."

I also enclose copies of Dr. Liberman's full article from which I quote in my testimony, as published in the February issue of the "Journal of Learning Disabilities".

I shall excerpt my testimony to confine my delivery to the time period allowed.

Sincerely,
Frances R Rice
Frances R. Rice
Advocate
July 21, 1980

Mr. Chairman and members of the Committee I greatly appreciate the opportunity to come before this committee to share with you my observations and concerns regarding the implementation of PL 94-142, the Education of the Handicapped Act.

My name is Fran Rice and I am from Montpelier, Vermont. I am a product of a public school experience that at best can be described as miserable because I was an unrecognized dyslexic. It was only through the intervention of some knowledgable professors and my own determinations that I became a graduate of Tufts University. I am also a parent of six children, three of whom are moderately affected by specific learning disabilities sufficient to have made their school years often difficult and frequently frustrating, not only for them but for us as their parents. Neither they nor I benefited from the federal legislation I champion as an advocate for the Specific Learning Disabled (SLD) population in Vermont.

By way of introduction, I am a past president of the Vermont Association For Learning Disabilities (VALD), am currently a member of the Specific Learning Disability Task Force for the State of Vermont and I serve on the National Board of Directors of the Association For Children and Adults with Learning Disabilities. In Vermont I am best known as a member of the VALD Advocacy Team.

Being a dyslexic, a parent of SLD children and an advocate has given me a perspective many educators have not experienced and provides me with an intimate look at the implementation of PL 94-142 and Section 504 of the Rehabilitation Act of 1973. I support the traditional classification system as detailed in PL 94-142 and I hope that my testimony will illustrate the severe problems generated when classification regulations are allowed to be circumvented. There are many aspects of the implementations that I would like to address but I shall restrict my testimony to issues of classification, related budget concerns, monitoring and training.

Classification is the law. PL 94-142 mandates that full procedural safeguards be established and maintained in order to protect a child and his parents in the identification, evaluation and educational placement process. Unfortunately, some states such as Vermont, have been allowed to take a non-catagorical approach to PL 94-142. This has caused inaccurate diagnosis of the handicapping condition, entry into special education of children who do not meet the federal definition criteria resulting in an inflated special education budget and inappropriate and inadequate educational programs. It should follow that the lack of accurate reporting information from states such as Vermont must then distort the accuracy of information provided by the Commissioner of Education in his annual report to Congress, required under PL 94-142. The rippling effects have far reaching impact upon such area as research, training programs, fiscal and program monitoring.

The classification of handicapping conditions in PL 94-142 eliminate the confusion between children poorly served and the handicapped child. Classification allows us to know individual needs and to design programs that fit the child rather than fitting the child into an existing program. The non-catagorical approach sets the stage for budgetary escalation and the growth of a burgeoning parallel educational system that competes with regular education for the same monies. When we permit "poorly served" children to be eligible for the expensive services of special education than we now see that we are spending special education monies to do the job we thought regular education was to accomplish, while draining the resources for those truly handicapped. PL 94-142 was not designed to shore up sagging educational failures. We urge a return to the intent of PL 94-142 and that it be accomplished through strict adherence to the federal eligibility standards.

Vermont's children have been almost exclusively served through the Vermont Consulting Teacher Model at the University of Vermont. This delivery model has been heavily supported by HEW. Graduates are employed in local school districts with 75% of their salaries funded by the State of Vermont. Until recently, at legislative recommendation, only Vermont trained Consulting Teachers have been able to meet the certification standards for employment jointly designed by the Division of Special Education and the University of Vermont. Special educators trained out of the state have turned away or have had to agree to take Behavior Modification courses leading to certification as a Consulting Teacher while employed on a conditional basis.

The key elements of the non-catagorical model are Behavior Modification and Task Analysis. The philosophy operates on the belief that it is not necessary or important to understand the cause of a handicapping condition and that learning and performance are all the same and do not need different strategies. A child merely become eligible for special education when he is at a 50% deficit of performance. This clearly is not the intent of PL 94-142. We are informed that this unidimensional approach can be useful for the mentally retarded and the seriously emotionally disturbed for whom it was orginally developed, but this across the board approach has been a disaster for the average to bright SLD, now acknowledged to represent the largest handicapping condition in the state.

The Behavior Modification aspect alarms many parents. We do not support the purchasing of our children through the Reward System via money, gifts or the earning of tokens which are redeemable at a store for material items. This manipulation is abhorant to us, for when a teacher encourages students to learn for a price she is teaching them that having a price is quite acceptable. This is an abuse of power and insidious in implication. It is to be remembered that the whole business of behavior control is basically a question of power, of conditioning young minds to accept a power authority. Parents thought that it is the responsibility of education to teach children to think independently and wisely for themselves, still a birth right in this country.

I bring the Vermont Model to your attention as an illustration that monitoring of federally funded programs is sorely needed. If a program is rejected by the consumer in the marketplace, why are we continuing to fund it? We must open up the existing program to incorporate the many disciplines that contribute to the understanding of children's needs and give our teachers access to in-depth training at both the undergraduate and graduate levels. Especially, we must have training programs that acknowledge that the central nervous system is involved in the acquisition and use of language.

To obtain relief from this problem knowledgable SLD parents with the assistance of the Office of Civil Rights (OCR) and the Vermont Legislature, recently achieved a first step towards rescuing the SLD population. Attached is a memorandum from the Director of Special Education, State of Vermont, issued 6/26/80 requiring the identification of the SLD through procedures guaranteed in PL 94-142. I would be very remiss if I were not to add that this memorandum represents the culmination of efforts on the part of many persons from allied professions who have encouraged and assisted our efforts over a period of years, and to whom we remain indebted.

Monitoring in Vermont has been limited to one of paper monitoring, not program monitoring. We need both. Monitoring should include a funded training program for parents to assist school districts in monitoring themselves as well as training for parents to monitor their own child's progress. Parents need training to support themselves in disagreements with schools so that costly attorney fees are not necessary at the Fair Hearing level. Parent groups need readily assessible information and assistance competing for grants through BEH for parent training.

In Vermont public confidence was eroded when the state monitoring team members were allowed to monitor the school districts they were assigned to serve. The federal monitoring team was led by a former Vermont Division of Special Education employee. Our VALD parent concerns, shared with the team during its on-site visit in January 1979, remain unanswered.

We urge that national policies be developed that will guide the Office of Civil Rights and the Bureau of the Education of the Handicapped when they are jointly involved in overlapping responsibilities under both Section 504 and PL 94-142. Such policies should hopefully accelerate the response from the agencies to those who wait for their findings long past published time frames. In our work with OCR we have found them responsive and helpful, but they report to us that they are receiving ever increasing complaints to process with too little staff. Perhaps BEH would respond similarly. We hear that other advocacy groups and parents across the country feel that BEH ignores their complaints. Something needs to be done to ensure concrete solutions. The framework of the federal regulations are basically adequate. The problems are stemming from inadequate enforcement at all levels.

Training It is my firm conviction that PL 94-142 has become a catalytic force in causing the public schools to take a look at themselves and the regular education practices. Dr. Lawrence Lieberman Ed.D, former HEW Director in charge of Title VI G (SLD area) has said: "The crisis in the schools belongs to regular education. The fact that 37 states have passed some form of minimum competency testing for students in the last five years testifies to this. The back to the basics movement is not an accident and no bandwagon but a well documented need. Special education has become confused with being an answer to the problems of regular education."

Presently, a major stumbling block to equal access to education is the adequacy of educational personnel. Section 504 requires that "teachers must be trained in the instruction of persons with the handicap in question..." When states provide only generic special education training and classroom teachers do not have access to knowledgable pre-service or in-service or are allowed by choice to ignore the responsibility to participate in any in-service workshops, than the concept of "mainstreaming" collapses and we come to acknowledge that mainstreaming is really more a political and social term than an educational reality. This is difficult for parents to resolve when they realize that schools were charged with the responsibility to prepare teachers long before PL 94-142 was fully effective.

Dr. Sylvia O.Richardson succinctly sums it up this way. "We need to extend the capacity of regular educational personnel so that they can accommodate a broader range of individual differences to prevent learning failures..thereby reducing the need for extensive and expensive special education support. (emphasis mine). Few teachers have been exposed, much less trained, within a multi-disciplinary framework."

In conclusion, and in behalf of the Vermont Association For Learning Disabilities, I again extend our appreciation for the opportunity to come before this committee. We are grateful for the legislation. Do not weaken the regulations or consumer participation. Parents have had to come to the federal government for responsiveness.

Thank You.

QUESTIONS FOR FRAN RICE

1. You comment on the fact that a public backlash to P.L. 94-142 may be building. Could you explain this statement?

Reply to question from Senate Sub-Committee on the Handicapped:

Public backlash to PL 94-142 is not a reaction to anticipate. It is here. It is visible at fiscal levels, primarily the result of a severe misperception or ignorance on the part of state and local agencies to understand their responsibilities to educate all children equally, including the handicapped. Pl 94-142 reflects criticism of what our public schools have been and still remain.

As an advocate I meet school personnel, including those at administrative levels, who remain comfortably uninformed or misinformed. PL 94-142 is incorrectly viewed as a new concept and responsibility, mandated without warning by the federal government. And so it is repeated, "If the Fed's mandate it, let the Fed's pay for it." Few acknowledge or understand that PL 94-142 was enacted because states were ignoring their own state statutes. The federal government, in its role of responsibility to legislate in behalf of the general welfare of all citizens, enacted PL 94-142 to force change on an unresponsive educational system.

Lack of enforcement of PL 94-142 has produced anger and disillusionment among parents and supportive educational personnel. We see that BEH has been allowed to merely go through the motions of paper monitoring and the resulting message is clear. PL 94-142 is a paper tiger...The law, supposedly enacted to protect handicapped children and their parents is now seen as having been permitted to protect the very conditions and systems it was designed to correct. The "Report By The Education Advocates Coalition On Federal Complicance Activities To Implement The Education For All Handicapped Children's Act", issued April 16, 1980, presents a scathing indictment of BEH in its monitoring and enforcement activities.

Public school education is in serious trouble even without considering the need to appropriately serve handicapped children. The commonness of this perception is seen in one example, by the frequency with which even the most prestigeous of professional journals and magazines tackle the subject in articles that warn of "The Collapse of Public School Education" or of "Teachers Who Can't Teach". Lack of enforcement of PL 94-142 accelerates this perception, because the public is not sure if children are handicapped or the educational system is handicapped! All the while special education builds a parallel educational system which actively competes with regular education for the same monies, services and jobs. The squeeze is on..Lack of enforcement of PL 94-142 is actively contributing to the accelerating erosion of public confidence in public school education and its government. It is a sad comentary, for PL 94-142 had the promise and has the potential of becoming the catalytic force in reversing this pervasive trend.

The educational system is not allowing parents to be partners with their schools in the education of their children. But, parents and taxpayers are held responsible for children who fail. Parents are overwhelmed with hopelessness. Children sit in misery, frequently traumatized by poorly trained educators and remain permanently scarred by a system whose priority is the protection of the existing establishment.

I would dearly hope that my thoughts shared so openly will not just become another piece in the "paper trail".

Frances Rice

JUL 1 1980

STATE OF VERMONT
DEPARTMENT OF EDUCATION
MONTPELIER
05602

TO: Superintendents of Schools
Special Education Coordinators
Other Interested Persons

FROM: Jean S. Garvin, Director
Division of Special Education &
Pupil Personnel Services
Vermont Department of Education
State Office Building
Montpelier, Vermont 05602
Telephone: (802) 828-3141

SUBJECT: Determination of Eligibility for Special Education

DATE: June 26, 1980

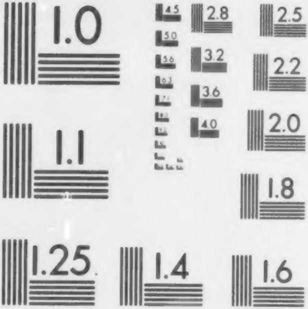
As time goes on, we see more clearly where adjustments must be made in our approach to fulfilling the requirements of P.L. 94-142 and Section 504 of P.L. 93-112. The identification of specific learning disabilities and serious emotional disturbance youths is one of these areas where adjustments are going to be necessary.

Background

The Office for Civil Rights has conducted a number of investigations of alleged failure to meet the requirements of P.L. 94-142 and Section 504 of P.L. 93-112 with respect to the identification and evaluation of SLD children. After comparing the Vermont Eligibility Standards for Special Education with the regulations for P.L. 94-142, OCR concluded: "that the State's policy of avoiding labels and categories when describing the handicapping conditions obfuscates the various disabilities leading to the misidentification of children, particularly children who are specific learning disabled" (p. 10). OCR has also cited a number of districts for failure to measure intellectual ability: "Since the May 25, 1979 Basic Staffing Team never dealt with the specific diagnosis of (the child's) intellectual ability ... but simply identified him as handicapped and eligible for special education services, we find the Basic Staffing Team meeting's conclusions and recommendations to be deficient" (p. 20).

On June 3, 1980, the Division received a request from the Legislative Committee on Administrative Rules (Vermont General Assembly) to amend its policy concerning the identification of children with specific learning disabilities. The Committee concluded that under Vermont's nonlabeling approach to identifying handicapped children: "Many learning disabled children will never receive the opportunity to be diagnosed. By contrast, the federal rule on the subject requires a range of procedural protections for children who have 'suspected' specific learning disabilities.

(over)


1.0
4.5
5.0
5.6
6.3
7.1
8.0
2.8
3.2
3.6
4.0
2.5
2.2
2.0
1.1
1.8
1.25
1.4
1.6

MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS
STANDARD REFERENCE MATERIAL 1010a
(ANSI and ISO TEST CHART No. 2)

Also, Vermont's statutes clearly contemplate that children of adequate mental ability with learning disabilities ought to receive diagnosis by specially trained teams, possibly including psychologists. In the committee's view, your rule requiring 'nonlabeling' type special education to undiagnosed, but suspected, learning disabled students violates both the federal regulation and Vermont statute" (p. 2).

On June 19, 1980 a meeting was held between representatives of the Department of Education, and the Region I Office for Civil Rights (Maria Montalvo, Chief of Elementary and Secondary Education Programs and Legal Counsel for OCR). The meeting was the first in a series of meetings aimed at amending Vermont's eligibility standards so that they comply with OCR interpretations of various federal requirements. In the afternoon of the same day, a special SLD Task Force was convened for a second time to discuss the development of guidelines for identifying and serving SLD children. The Task Force anticipates having guidelines for the State Board of Education to consider by November of 1980. OCR may require changes in our procedures for identifying SLD children prior to November.

Current Practice

Although I am not in a position at this time to issue new guidelines for SLD identification, I urge you from this point on to ensure that all handicapped children suspected of having a specific learning disability be identified according to all of the criteria outlined in the May 23 and December 29, 1977, Federal Register.

In monitoring, we have found very few children whose records acknowledged a finding of specific learning disabilities. Because of this, we ascertain that some two or three thousand children may need to have their records amended to show a specific learning disability and to show an appropriate diagnosis and Basic Staffing Team report. The reason for this is that we are fast approaching a time when school districts must be able to document that every handicapped child can, if necessary, be categorized in one of the eleven handicapping conditions defined in P.L. 94-142. When pushed to the extreme, if a district cannot substantiate that a child is mentally retarded, seriously emotionally disturbed, speech impaired, deaf, hard of hearing, visually impaired, multi-handicapped, deaf-blind, other health impaired or orthopedically impaired, then they must either classify the child as SLD or as not eligible for special education.

Fortunately, as of this time, we have yet to be pushed to the extreme in labeling children. We clearly are, however, being forced to designate all SLD children. Moreover, we must be able to substantiate that all served children could, if necessary, be categorized in one of the eleven P.L. 94-142 definitions.

For monitoring purposes, the Division will expect to find that between 20% and 40% of a district's enrollment in Special Education are identified as SLD. In the December, 1979 Child Count, the national incidence of SLD was 31.7% of the total enrollment in Special Education. A deviation of 15% plus or minus will alert the Division to the need for a review of procedures for identifying SLD students.

As I said before, more explicit guidelines for identifying SLD youths will be forthcoming after a series of meetings with our SLD Task Force and personnel in the Office for Civil Rights.

Guidelines for Serious Emotional Disturbance

In the months that lie ahead, a set of guidelines will be issued for identifying children with serious emotional disturbance. This category, like SLD, could become a major point of contention unless we have rather explicit defining criteria. It is important that this category be limited to children with an unquestionable need for special education because of severe disturbance. We cannot become a vehicle for serving socially maladjusted children, except those who qualify for special education under one of the eleven handicapping conditions.

We will make every effort to consider your input in these matters and to keep you well informed as new guidelines are developed.

The Implications of Noncategorical Special Education

"With the special permission of The Professional Press, Inc., 101 E. Ontario Street, Chicago, Illinois, 60521"

VERMONT ASSOCIATION FOR
LEARNING DISABILITIES
9 HEATON STREET
MONTPELIER, VERMONT 05602

Laurence M. Lieberman, EdD

Few states have legislation requiring the abolition of traditional classifications of the handicapped. However, many state and local education agencies have established guidelines tantamount to providing noncategorical services. The obvious intent of a general approach to the handicapped is to describe rather than label, to accept rather than stigmatize.

LABELING VS. CLASSIFICATION

Classification of children for various purposes has been the historical norm. The early 1970s brought a rebellion against such practices. There is a wealth of research and discussion on the evils of labeling, and well there should be; however, it has become more and more evident that labeling is not inherently evil. What is questioned is the purpose of the labels and how stereotyped thoughts and attitudes evolve from them.

In the spring 1979 *Directive Teacher Journal*, Nicholas Hobbs, chairman of the Project on Classification of Exceptional Children and principal author of *The Futures of Children* stated, "People are saying that we should not classify... these good people are wrong." (pp. 1, 8-9). Yet much of the noncategorical movement seems to have emanated from Hobbs' work and is attributed to him. In another interview in *Exceptional Children*, April 1978, Dr. Hobbs expressed the following: "The existing classification systems serve important functions in schools. It is hard to abandon what we have until there is something to take its place." (pp. 494-497).

There is no doubt that the use of labels in the public schools has been reduced. However, to say that labels are no longer in use would overstate the case. There are, of course, aberrations. Some refer to mental retardation as a general learning disability or to emotional disturbance as an adjustment reaction. "Underachiever" is probably preferable to "slow learner." New labels are constantly being invented, such as "substantially independent" rather than "educable mentally retarded."

There is no beginning and no end—only more confusion. Some argue for more benign labels; others say the problem is inherent in any label; and still others prefer behavioral descriptors. Whatever the approach, we end up with words that convey ideas and ultimately general notions about groups of children.

For 15 years the Bureau of Education for the Handicapped (BEH) in the U.S. Office of Education has been a major funding source for university-based teacher training. In 1972 BEH changed its policy from funding specific areas such as mental retardation, emotional disturbance, etc., to noncategorical grants to university training programs. The universities were pressured to decompartmentalize programs for specific handicapping conditions within their special education departments. Course titles such as "Methods and Materials for the Learning Disabled" became "Remedial Strategies," with the assumption that the latter would be applicable for all children with inadequate skills.

Children were looked upon as individuals, while curricula and learning theory were generalized. However, indepth study of particular handicapping conditions tended to be minimized. Blindness and deafness split from the main line as being just too different. Mild mental retardation, learning disabilities, and emotional disturbance short of autism were lumped together for teacher training purposes. Professionals titled "learning disabilities specialists" were replaced by "resource room teachers." Instead of providing an addition to the specialist, the generalist replaced the specialist. The children, although never considered similar, were thought to be teachable in a similar fashion.

Special education teachers soon began to realize that their knowledge of the handicapped was cursory and that they were ill equipped to deal with the medical, social, parental, and psychological aspects of specific handicaps. Perhaps this entire situation is cyclical and learning disabilities specialists will someday make a triumphant return only to be banished at some future time.

There are important practices in effect that are highly significant for those who would choose noncategorical special education. Program decisions are still made by classification.

Assessment procedures are organized to develop a diagnosis and to respond with a program for similarly labeled children. Programs do not exist by behavioral descriptor, such as a class for acting out, a class for aggressive children, or a resource room for children exhibiting written reversals. Programs are designated for learning disabled students, emotionally disturbed students, or retarded students. Within the same grouping of learning disabled children one might find a hyperactive child whose primary problem is visual information processing, a child with a verbal fluency deficiency, or a child holding his pencil in his fist because of fine motor coordination problems. The possible combinations are infinite, especially if one considers the so-called usual spectrum of behaviors associated with mental retardation and emotional disturbance. While lip service is being given to individualized programming and evaluating the strengths and weaknesses of each child, that child may in fact be grouped in such a way as to negate teaching to his known attributes.

The conceptual alternative for those taking issue with this is to work with each child individually. However, then the teacher becomes a tutor and loses the group as a worthwhile educational process. There is no clear-cut answer. The point is that children find their way into groupings called programs because of classifications. Classifications may be the result of behavioral descriptions, but they take an obvious back seat when it is time for important decisions to be made. The label is primary.

The counter argument is dropping all labels in favor of "children who need special education." This grand experiment is doomed to failure. The heterogeneity of traditional groupings of behavior and learning is wide and difficult enough to deal with, without compounding the situation by cross-categorical grouping.

CONSEQUENCES OF NONCATEGORIZATION

Sanctioning noncategorization can result in a terrible mess. One of the more significant problems is that educators do not know who is handicapped anymore. The BEH was originated with a very clear mandate for the handicapped. When this mandate was given, a handicapped child was not handicapped because he was failing in school; he was failing in school because he was handicapped. We evaluated children because physicians, parents, teachers, psychologists, social workers, school nurses, etc., were astute enough to suspect that something was developmentally wrong with a child. A child did not have to fail in school for two years before being rated academically deficient enough to warrant special education programming. Not every child failing in school is handicapped, but in many places every child failing in school becomes a candidate for special education services and consequently is considered handicapped.

This is not terribly wrong in and of itself. Chronic school failure may result in genuine emotional disturbance. The problem is confusing children who fail in school with handicapped children. Conceptually, focus on the handicapped is primary both in terms of the federal government and in the minds of those associated with the inception of special education. Lumping together children who fail in school with truly handicapped children does an obvious disservice to both. This is most evident in learning disabilities, which is operationally defined by many as a discrepancy between ability and academic success, usually represented as low basic skill achievement. Many special education administrators are familiar with having to provide educational plans for children who score six months below grade level in reading on a standardized achievement test. These same administrators are fully aware that the categorically handicapped child may be shortchanged as the result of the glut of failing students. Many parents want extra help for their children and rightfully so. This is a commentary on regular education practices, not an admission of having given birth to a handicapped child. In some school systems 30% to 40% of the children are functioning below grade level. This is not an epidemiological survey of handicapping conditions but an indictment of educational practices in some school systems.

TRADITIONAL CATEGORIES AND CLASSIFICATIONS

An obvious way to short-circuit a possible large-scale abuse is to officially utilize traditional categories and classifications. If learning disabilities were really thought of as being a central nervous system disorder, a euphemism for brain damage or brain dysfunction, would parents and school personnel be so eager to tap special education services? Many parents want their children to be designated as special education students to be eligible for support services, which is usually aid in the resource room. Would these parents want their children labeled "handicapped" in order to receive those same services?

The confusion between school failure as evidenced by underachievement or inadequate acquisition of basic skills and having a genuine handicap is particularly potent in the realm of reading. Poor readers usually have even more difficulty with written expression and spelling. These deficits result in failure of a vast number of school tasks unless teachers are willing to task analyze and utilize the child's strengths in formulating teaching strategies. Unfortunately, many professionals use discrepancies in reading achievement as the sole indicator of a learning disability. This has contributed to the widespread and often erroneous use of the term *dyslexia*.

This is the classic case of school failure being translated into a disorder of the central nervous system. Literature abounds on the myriad, diagnosable, neurological concomitants of dyslexia, suggesting that its correlates are detectable prior to the introduction of written material to the child. We know the futility of after-the-fact assessment of reading disability. Children unable to read are referred for an evaluation; the evaluation is geared to finding children unable to read; the evaluator corroborates the referral agent's contention that the child is unable to read. In *Reading, Writing, and Speech Problems in Children* (W.W. Norton and Co., Inc., New York, 1937) Samuel Orton wrote:

> There are multiple causes for a delay in learning to read. Marked defects in vision may underlie such a difficulty. Defects of hearing have also been encountered which have led to poor auditory discrimination of words. General intellectual deficit is also a frequent cause of failure in reading. Emotional disturbances, such as antagonisms toward a particular teacher or general apathy toward all schoolwork, or lack of adequate disciplinary training at home, may all play their part in giving rise to a slow start in this academic need.

Another major area of concern is the confusion of discipline with emotional problems and the consequent overloading of special education responsibilities. School rule breaking, lack of willingness to perform school tasks, lack of homework production, and general attitudes of apathy and malaise are pervasive. It is apparent that many of these problems are being foisted on special educators under the guise of emotional problems. Discipline has never been the province of special education, but it has always been the province of regular education to ensure appropriate student participation in the school program. Furthermore, just as neurologically based dyslexia is not always an explanation for poor reading achievement, emotional disorder or disturbance is not always an explanation for lack of assigned homework or refusal to go to detention. Too often educators are trapped into instituting special education programming for discipline problems. Perhaps professionals would be more realistic in their assessments of these problems if special education programming was contingent on a traditional label such as "emotional disturbance."

Some parents demand special education services because their adolescents get Cs in trigonometry when the students may have received As in mathematics all through school. The suggestion here is not that they shouldn't receive help. All students should be helped in every way possible to ensure the highest possible achievement. However, special education should not be the programmatic mechanism for this help. Using it as such represents another defeat for the handicapped, for whom these services are a primary consideration. Special education must be reserved for the handicapped. This will not be the case as long as noncategorical approaches and general school failures result in having to deliver special education services. Special education is warranted for the mentally retarded, emotionally disturbed, truly learning disabled, blind, deaf, and physically impaired. It is not warranted for underachievement, discipline problems, and bad grades.

CONCLUSION

The crisis in the schools belongs to regular education. The fact that 37 states have passed some form of minimum competency testing for students in the last five years testifies to this. The back to the basics movement is no accident and no bandwagon but a well-documented need. Special education has been confused with being an answer to the problems of regular education. Special education, with its traditional classification system, would not be confused in this manner. In fact, the intent of PL 94-142 is such that special education will only be as good as regular education allows it to be. If educational practices for normal children are questionable, how can anyone expect educational practices for the abnormal to be better?

It is noteworthy that PL 94-142 maintains a traditional categorical approach in designating those eligible for benefits under the law. Classifications as presented in PL 94-142 will eliminate confusion between school failure and handicaps and will preserve the primary rights of the handicapped to special education services. This will also force regular education to solve its own problems, without looking outside itself for answers only to be found internally.

ABOUT THE AUTHOR

Laurence M. Lieberman *received his doctorate in special education for the neurologically impaired from Teachers College, Columbia University. From 1970 to 1973 he was the learning disabilities coordinator in the Bureau of Education for the Handicapped, U.S. Office of Education, Washington, D.C. He was the chairman of the Special Education Doctoral Program at Boston College from 1974 to 1978. Currently Dr. Lieberman is a consultant to numerous school systems in Massachusetts and throughout the United States. Requests for reprints should be addressed to him at 28 Sheffield Rd., Newtonville, Mass. 02160.*

Senator **Stafford**. Thank you very much, Ms. Rice. We appreciate your coming down here and assisting the subcommittee. I can assure you that the other members of the committee will also read the testimony, since they were not able to hear you deliver it to us, because of the multitudinous assignments that all of us in the Senate seem to inflict upon ourselves.

Ms. **Rice**. We understand that. Thank you very much.

Senator **Stafford**. I hope I will see you soon in Vermont, where I trust also it will be somewhat cooler than it is down here.

The next witness this morning will be Ms. Ruthann Saxman, of Alexandria, Va.

Welcome to the committee hearings. We will be glad to hear your testimony, which may either appear in full as we have before us and summarized by you, or you may read it into the record, whichever you prefer.

STATEMENT OF RUTHANN SAXMAN, CHAIRMAN, COMMITTEE ON THE HANDICAPPED, BLESSED SACRAMENT CHURCH, ALEXANDRIA, VA.

Ms. **Saxman**. Mr. Chairman and distinguished Senators of this subcommittee, my name is Ruthann Saxman, and I am appearing here today as chairman of the committee on the handicapped at Blessed Sacrament Church in Alexandria, Va.

I would like to thank the committee for inviting me to give my insights and comments on Public Law 94-142, for it is one of the most important laws to ever be passed for handicapped people, because it deals with the rights of a handicapped child to have a free and appropriate education.

One of the problems in the implementation of this act seems to be the position of educators that all handicapped children should be educated in public schools and the argument by parents that their children should, if already enrolled, continue to receive their education in private schools and have their education paid for.

Section 121a.550(b)(i) of the least restrictive environment clause clearly states:

> Each public agency shall insure to the maximum extent appropriate, handicapped children, including children in public or private institution or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

I also take from that statement that handicapped children are to be educated for the most part in public schools. I have talked with many people in my work, and there came about a lot of discussion about how do you educate a blind child in a public school or how do you educate a deaf child in a public school. And our resolutions were that a blind child could be taught by means of running a tape of the entire class in the classroom, then giving the tape to that child to take home and study in the evening, just as you or I would study a book. For the deaf child whose problem is hearing, if the teacher would merely highlight the important points of her class on the blackboard, and the deaf child took notes, he too could go home that evening and study his notes.

So that where it says that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, it is not that these methods cannot be achieved satisfactorily; it is merely that the educators in our country have not taken the time to think up these ideas. And I cannot blame the educators for their position, because they have to be concerned about budgets and remaining eligible with the programs they have developed to get their Federal funding.

On the other hand, parents also have fears which need to be overcome, for they want the best for their child. For these very reasons, Public Law 94-142 is a law which must be implemented very carefully. For instance, people training to go into the field of teaching and education are not required to take any courses concerning the education of handicapped children. Anyone going into this field should, before they were able to be certified, have training in this area. The general public as a whole has no knowledge of what the needs of the handicapped person are and the needs of each handicapped student differ. And I also feel that the related services clause in the act should define more clearly, not the services involved, but who is responsible for each service; the parent or the child. This is something that at the present time is not defined clearly in the act.

I believe that for this act to be successful, individuals involved in the educational placement of these children should be required to have in-house training in the awareness of handicapping conditions so that these children will be appropriately placed and there should be the same in-house training for teachers in regular schools, transitional programs to prepare both handicapped and nonhandicapped students in relating to each other should be established, and conferences for joint planning between resource staff and regular and special education teachers should be started.

The other problem area—at least, so it seems to be in my home State of Pennsylvania—seems to be in the area of development of the IEP for each child. The law clearly states that this program is to be developed with a representative of the public agency, the child's teacher, one or both of the child's parents, and other individuals at the discretion of the parents or agency. At the present time in the State of Pennsylvania, the IEP's are sent home already developed for the parent, and all they request of the parent is that the parent sign them. We must not lose sight of the fact that these are decisions to be made jointly between parent and teacher. This joint effort is the only way that fears for both sides will be overcome.

The group that I chair is very involved in educating people about the handicapped world, its problems, its laws and its needs. On my committee serve an attorney, a social worker, a legislative aide, and a young woman with background in special education. I myself have 2 years toward my bachelor's degree in the education of socially disadvantaged and handicapped children. I put together the educational programs, my attorney handles the legal problems, my social worker helps fill out difficult forms, and the young woman and I are presently involved in developing a way to train our religious education teachers on how to deal with the handicapped child in the classroom.

But it is of the utmost importance that everyone get involved in this effort, including PTA's, church committees such as mine, and parent groups, so that we may all work together to achieve one common goal: A better understanding of each handicapped child's needs so that we can help them integrate themselves into our society and the education of educators in this area so that they can make sound, reasonable judgments concerning these children.

The handicapped do not choose to be pitied or treated special, but for some more than others, their road to independence takes longer. Only through both sides being aware and coming to an understanding of each other can this goal ever be achieved.

However, this goal will take time to achieve, and both sides must learn to be patient with each other to achieve this goal. It is not the law that needs changed but rather the attitudes of the people toward the handicapped. You as Senators can play a very important part in this area by setting examples and by recognizing handicapped people in your home States who are worthy of recognition.

That concludes my statement, and, once again, I would like to thank you for this opportunity.

[The prepared statement of Ms. Saxman follows:]

TESTIMONY ON P.L. 94-142

Mr. Chairman and distinguished Senators of this Committee, my name is Ruthann Saxman and I am appearing here today as Chairman of the Committee on the Handicapped at Blessed Sacrament Church in Alexandria, Virginia.

I would like to thank the Committee for inviting me to give my insights and comments on P.L. 94-142. This law is one of the most important laws to ever be passed for handicapped people. It is so important because it deals with the rights of a handicapped child to have a free and appropriate education. Unfortunately, one of the problems in the implementation of this Act has been the position of educators that all handicapped children should be educated in public schools and the argument by parents that their children should, if already enrolled, continue to receive their education in private schools and have their education paid for. Section 121a.550(b)(i) of the least restrictive environment clause clearly states:

> "Each public agency shall insure to the maximum extent appropriate, handicapped children, including children in public or private institution or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.."

In a sense one cannot blame the educators for their position. After all they have to be concerned about budgets, remaining eligible with the programs they have developed to get Federal funding. On the other hand, parents have fears which need to be overcome for they want the best for their child. For these very reasons, 94-142 is a law which must be implemented very carefully. For instance, (1) people training to go into the field of teaching and education are not required to take any courses concerning the education of handicapped children. With the implementation of this Act, anyone going into this field, should, before they are able to be certified, have training in this area; (2) The general public, as a whole, has no knowledge of what the needs of the handicapped are; (3) The needs of each handicapped student differ; and (4) The related services clause should define more clearly, not the services involved, but who is responsible for each service.

For this Act to be successful individuals involved in the educational placement of these children should be required to have in-house training in the awareness of handicapping conditions so that these children will be appropriately placed and there should be the same in-house training for teachers in regular schools, transitional programs to prepare both handicapped and non-handicapped students in relating to each other should be established, and conferences for joint planning between resource staff and regular and special education teachers should be started.

The other problem area seems to be in the area of development of the IEP for each child. The law clearly states that this program is to be developed with a representative of the public agency, the child's teacher, one or both of the child's parents and other individuals at the discretion of the parent or agency. At the present time these programs are merely being sent home already developed for the parents to sign. We must not loose sight of the fact that these are decisions to be made jointly between parent and teacher. This joint effort is the only way that fears will be overcome.

The group that I chair is very involved in educating the people about the handicapped world, its problems, its laws and its needs. On this Committee serve an attorney, a social worker, a legislative aide and a young woman with background in special education. I myself have two years toward's my Bachelor's degree in the Education of Socially Disadvantaged and Handicapped Children. I put together the educational programs, my attorney handles the legal problems, my social worker helps fill out difficult forms and the young woman with the background in special education advises me in that area. She and I are beginning to work on various projects together to aid our teachers in religious education on how to deal with a handicapped child or children in the classroom.

It is of the utmost importance that everyone get involved in this effort including PTA's, church committees such as mine and parent groups so that we may all work together to achieve one common goal: A better understanding of each handicapped child's needs so that we can help them integrate themselves into our society and the education of educators in this area so that they can make sound, reasonable judgments concerning these children.

The handicapped do not choose to be pitied or treated special but, for some more than others, the road to independence takes longer. Only through both sides being aware and coming to an understanding of each other can this goal ever be achieved. However, this goal will take time to achieve and both sides must learn to be patient with each other to achieve this goal. It is not the law that needs changed but rather the attitudes of the people towards the handicapped. You, as Senators, can be instrumental in this area by setting examples and seeing to it that handicapped people in your State worthy of recognition are recognized.

Thank you for this opportunity. That concludes my statement. Should you have any questions I shall be happy to remain to answer them.

NOTE.—Response to the written question subsequently submitted to Ms. Saxman appears at the conclusion of the printed word on p. 616.

Senator STAFFORD. Well, the subcommittee certainly thanks you, Ms. Saxman, for helping us today. As I have told the others, your testimony will be read by those who were not able to be here personally, and out of all of these hearings that we have held in this Congress, I am sure we are going to make some corrections as we see them in the various laws that we think help the handicapped in the next Congress, which I am sure Senator Randolph and I will both be a part of, since neither of us faces election this year.

We thank you all, and the Chair will announce, in terminating this meeting that we are going to meet next on Thursday, July 31, for those of you who care to come—we hope you will. We will start the meeting promptly at 9:30, and it will be in room 5110 of this building, which is up on the fifth floor. And, reversing the order of precedence of today, Senator Stafford will be presiding during the first half and Senator Randolph during the second part of that meeting.

So the subcommittee stands in adjournment until 9:30 on Thursday at room 5110.

[Whereupon, at 11:15 a.m., the subcommittee was adjourned, to reconvene Thursday, July 31, 1980, at 9:30 a.m.]

OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1980

THURSDAY, JULY 31, 1980

U.S. Senate,
Subcommittee on the Handicapped,
Committee on Labor and Human Resources,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 5110, Dirksen Senate Office Building, Senator Robert T. Stafford presiding pro tempore.

Present: Senator Stafford.

Staff present: Patricia Forsythe, staff director.

Opening Statement of Senator Stafford

Senator **Stafford**. The Subcommittee on the Handicapped will come to order.

Good morning, and welcome to the 14th oversight hearing by the Subcommittee on the Handicapped during the 96th Congress. As you know, 11 of these hearings have dealt specifically with implementation of Public Law 94-142, the education for all handicapped children, as does this hearing today.

When we started these oversight hearings in 1979, we announced what might be called a reversal of the usual order of witnesses before congressional committees. That is, instead of hearing administration witnesses first and then hearing other witnesses present their comments on recommendations by the administration, we thought a more productive first step would be to hear first from those individuals—parents, teachers, local and State administrators, and representatives of national organizations serving the handicapped—who, through their personal experiences in working with the law, could give us valuable insight into how the law is actually working and into those areas where their first hand experiences indicated it might be improved.

The second step would then be to hear from administration witnesses and learn of their thinking on the earlier testimony as well as on how necessary improvements in the law could best be effected. By combining the experiences of the administration and the experiences of those individuals who are most intimately involved with the implementation of the law and with those persons the law is designed to benefit, it is our hope that we will be able to move much closer to our national commitment to provide a free and appropriate public education to our Nation's handicapped children.

Today's hearing will complete the important first step of the subcommittee's oversight hearings. With the addition of the testimony we are to hear this morning and the testimony presented to the subcommittee in our previous hearings in this Congress, we will have amassed an impressive body of information concerning the implementation of Public Law 94-142—on the benefits it has already provided to thousands of our handicapped children; on the areas in which improvement is needed; suggestions as to how these improvements can be made. At our next hearing we expect to hear testimony from administration witnesses; we will hear the views of the people charged with administering the law at the national level. It is our hope that those departmental witnesses who appear before us will have had an opportunity to read the testimony presented in previous hearings and let us have the benefit of their comments on the concerns and suggestions voiced by previous witnesses, as well as providing us with their own views on how Public Law 94-142 is working and what, in their opinion, can and should be done to improve the law.

The Chair will note in starting that we will be interrupted at 10 o'clock by a rollcall or more rollcalls back to back in the Senate. But we will go as far as we can up to that time and we will resume again as soon as the rollcalls are over.

The Chair would also ask that witnesses, as far as possible, summarize their testimony in 5 minutes, understanding that, without objection, the Chair will place full statements that have been provided to us in the record as if delivered.

With no further ado, the Chair will invite Mr. Albert Shanker, president of the American Federation of Teachers, to take the witness stand. And having come in early this morning in heavy traffic, I failed to recognize you, Mr. Shanker, in the elevator because I was still cursing the traffic that I was in for the last hour.

We are very glad to have you and appreciate your coming down.

STATEMENT OF ALBERT SHANKER, PRESIDENT, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, ACCOMPANIED BY GREG HUMPHREY AND MARILYN RAUTH

Mr. **Shanker**. Thank you, Mr. Chairman.

I have with me two of my assistants, Greg Humphrey, who works with the legislation generally, and Marilyn Rauth, who is especially qualified in this area of education of the handicapped.

I have submitted written testimony, and I am just going to rather quickly underline a number of the points made in that testimony.

I am Albert Shanker, president of the American Federation of Teachers, AFL-CIO, and we represent more than 568,000 teachers, paraprofessionals, members in higher education, health care professions, and civil servants.

I can say that this topic is not one of mere academic interest to our members. At our annual convention and at State conventions of our teachers throughout the country, there is not only a great deal of interest but, in many cases, so much frustration in terms of the application of this piece of legislation that on a number of occasions our members have introduced resolutions from the floor calling for a moratorium on the implementation of this act, or calling for its reconsideration. It has taken considerable effort to urge restraint on the part of our delegates and members at these meetings because the implementation of this legislation has caused very serious problems and difficulties within the schools.

Now, before us, and particularly before this committee, is the question of what should be our next step toward institutionalizing the right of handicapped persons to a free, appropriate education. Our members continue to question how a law, which is meant to help assure children's rights, can result in the following:

Less instructional time for each child;

Staffs that are ill prepared to work effectively with handicapped children;

Children being placed in settings with no resources or materials adapted to their special needs;

An inability to remove handicapped students from the premises as rapidly as any other child in an emergency; and

An apparent dismantling of special education, promulgated not in the interest of individual children, but rather in the interest of stretching ever-shrinking dollars.

The only way we believe that Public Law 94-142 will ever work in its present form is with a massive infusion of additional Federal funds totaling several billions of dollars.

We, in this testimony, point a good deal to the research that was done by BEH. We feel that quite a bit of it is inadequate; that, in a sense, the research was kind of self-evaluation of the agency. We point to some studies that have not seen the light of day or been given adequate publicity that indicate some of the problems, and we urge you to take a close look at those studies that seem to have been set aside.

We believe that empirical studies that are critical of the effects of Public Law 94-142 or its implementation were suppressed by BEH and that studies that have the potential to produce such results are being assiduously avoided. We hope that this committee will look into this matter and insist that the research orientation of the new Office of Special Education be different. We are willing to put our reports of serious problems growing out of this legislation in the schools to the test of empirical research and feel that the Office of Special Education must do the same.

It is time that we discuss our problems and our options. At the root of all these problems is money. With the infusion of several billions more Federal dollars, Public Law 94-142 could be made to work.

The AFT would make this option its first choice because it could not help but foster the goal of an appropriate education for all handicapped children. If, on the other hand, Congress feels an increased appropriation of this amount of several billion dollars for Public Law 94-142 would not suit the mood of the country, it cannot turn its back on State and local governments who face this same public sentiment.

I come from New York State and that State alone, the education department really, recently estimated that the cost of educating children with handicapping conditions for the 1980-81 school year at close to $1 billion, with the State contributing $415 million, local districts contributing $472 million and the Federal Government contributing $60 million. Again, we offer the reminder that if the mandate were fully met, those costs would have to be much higher. I am very much involved with the problems of New York City. I have been since the great crisis of 1975 when we helped to provide some bailout money to the tune of $1.3 billion in teacher pension funds. We had hoped that school costs could be reduced as enrollments declined. However, we have managed so far to find over 70,000 handicapped youngsters as a result of a court decision, and the education of these youngsters will cost approximately four times the amount of the education of regular youngsters within the school.

The effect of that is that we have really located 280,000 additional youngsters in terms of costs. Just think of that in terms of the problems of a city like New York. We are a national organization. We represent cities like Detroit, San Francisco, Cleveland, Chicago and Washington, D.C. I do not have to say that all of these cities are on the brink of bankruptcy and their school systems are faced with massive layoffs. At the same time, to be faced with the obligation of providing all these additional costs is disastrous in terms of education and your urban policy within this country.

Now, if the Federal Government is not prepared to provide lifegiving dollars for this mandate, several serious consequences are possible. First, we fear that the number of disabled children—whose education is actually being diminished as a result of some Public Law 94-142 provisions—will continue to grow to alarming proportions. They will lose many benefits won within special education over the last three-quarters of the century, ironically in the name of their own civil rights.

As courts expand their interpretations of an already broad legislative mandate, schools will either be unable to meet the costs or will be forced to draw from regular operating budgets. Arguments will be made that services to handicapped children need only match those offered to nonhandicapped students.

Within the current financial trend, both regular and special education could sink to such levels that public education itself could be undermined.

I should say that the more we take away from one group of students and give to another group and create the kind of community conflict and deterioration of education, the more we foster support for all types of schemes to provide support for nonpublic education providing for further erosion.

If Congress cannot back up this mandate with adequate resources, it should be exploring ways of preserving its intent and perhaps cutting back on unnecessary bureaucratic processes.

To begin this, we believe that the IEP requirement should be eliminated, as it has resulted primarily in a reduction of child-teacher contact time. The cost of this process in terms of education dollars and staff and parental time is in no way justified by the research reports showing it surrounded by confusion and resentment. It is surrounded by a good deal of confusion and resentment. More importantly, it has been shown not only to be basically unproductive but even detrimental in a number of ways.

We would hope that this requirement would be suspended and that studies would be undertaken to explore reasonable means of assuring individualized education programs.

At the same time, some steps must be taken to prevent least-restrictive environment placements from being used as a cost-saving device without insuring that the placement is truly in the best interest of the child; that the receiving teacher is adequately trained to work effectively with the child; and that the receiving classroom is adequately prepared and equipped. Inservice training should be required by law for teachers and other school personnel assuming new roles and responsibilities as a result of least-restrictive environment placements. This training must be completed prior to placement.

Finally, we call your attention to a glaring loophole in Public Law 94-142. Although deadlines are affixed to most of its provisions, no mention is made of a time limit that cannot be exceeded between the time a child is referred for evaluation and the time that evaluation actually takes place. Not all States have such time restrictions and, in those that do, they are rarely enforced. As a result, large numbers of children are lost in the limbo of referral waiting lists.

In conclusion, we urge Congress to support the rights of handicapped persons espoused in section 504 of the Rehabilitation Act of 1973 by increasing appropriations under Public Law 94-142 to several billion dollars. We recommend close examination of all provisions of Public Law 94-142 and their effects on handicapped students, nonhandicapped students, school and local and State finances, and public education itself.

We reject the idea that we should continue to live with the shortcomings of this legislation and that somehow it is sacrosanct and that we need another 2½ or 5 or 10 or 25 years of experience before changes are made. Major changes should be made. That handicapped persons are entitled to a free, appropriate public education need not be utopian or theoretical. It should be fact. The theoretical premises that must be scrutinized and experimented with are the avenues by which we can best accomplish this goal. Responsible action will resolve emerging problems; neglect could make our present problems seem trivial.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Shanker and additional information supplied follow:]

TESTIMONY OF
ALBERT SHANKER, PRESIDENT
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
TO SENATE SUBCOMMITTEE ON THE HANDICAPPED
ON P.L. 94-142

July 31, 1980

I am Albert Shanker, president of the American Federation of Teachers, AFL-CIO. On behalf of the 550,000 teachers, paraprofessionals and other members of the AFT, I would like to thank you for this opportunity to offer our views before this Committee on P.L. 94-142, the Education for All Handicapped Children Act.

Since its original support of passage of P.L. 94-142 in 1975, the AFT has often reaffirmed its belief in the goals of this legislation, namely the equal right of all handicapped persons to a free appropriate public education. On the other hand, we have continuously expressed reservations about certain aspects of this law and its regulations where we felt their effect on children to be negative. It is probable that in the course of these hearings, you will hear conflicting stories -- one side extolling the virtues of P.L. 94-142, the other its vices. Such a debate is healthy unless, of course, one of these groups is ultimately judged exclusively right or wrong. Either judgment, in our opinion, is irresponsible. Yet, failure to hold P.L. 94-142 up to careful scrutiny could result in exactly this, an assessment that the law is all good or all bad. Inaction on the part of Congress in resolving the problems of P.L. 94-142 would be as grave a mistake as any efforts undertaken to negate its intent.

You no doubt are aware of the position espoused by some representatives of the former Bureau of Education for the Handicapped, as well as others, that despite its faults, P.L. 94-142 must not be opened to change for fear that this might occasion the loss of all its key provisions. Incumbent in this philosophy, whether it is conscious or not, is a belief that the law itself -- and not its goal -- is sacrosanct. It allows the well-being of any number of children to be sacrificed to what is supposed by this group of theorists, to be the future "common good." Our members work in day-to-day classroom contact with the individual children upon whom the law impacts injuriously. They have little understanding of proponents of the above philosophy who counsel that there inevitably are bugs in any new system which time should be allowed the chance to work out. Originally it was argued that two to three years should be allowed to elapse before further government intervention. Now that we are two and a half years into P.L. 94-142's implementation, a further extension of time needed for the law to begin to work to significantly benefit children and education is requested of us. How long are we to wait before considering how we might better adapt P.L. 94-142 to accomplish its stated goals -- five, ten, twenty years or more? We will shortly review why neither our members, nor hopefully this Committee, can afford or indeed condone the disinterested and dispassionate viewpoint outlined above.

Before doing so, we would like to mention a second stance on P.L. 94-142, which would be equally nonsensical. This amounts to abolishing the protections provided by P.L. 94-142 altogether and returning to the status quo prior to its implementation. While we believe that the state of the art and conditions of special education prior to 1975 were evolving impressively, we cannot ignore the abuses that still existed. These included placement in special education for the purpose of segregation, inappropriate evaluation methods, dead-end tracking and misdirection of funds. Additionally, we might mention the large numbers of handicapped children who were either turned away from the schools entirely or placed in classrooms only to be ignored. It seems clear that, if nothing else, P.L. 94-142 has exposed the seamier side of special education to public scrutiny. For this reason, we feel a positive purpose has been served. We make this judgment on the basis that only if problems are allowed to surface can they be dealt with forthrightly and solutions found.

Looming before us, and particularly before this Committee, is the question of what should be our next step toward institutionalizing the right of handicapped persons to a free appropriate public education.

There are some who would have you believe that this indeed is what is happening in the schools as a result of P.L. 94-142, with only minor difficulties. Yet, reports from the field and conferences we have held with teachers, paraprofessionals and other school employees in urban, suburban and rural school systems throughout the country tell another story: it is one of confusion, abuse and massive non-compliance with law in relation to Section 504 of the Rehabilitation Act and P.L. 94-142. To an even greater extent than teacher rights issues, although these are just as important, our members question how a law which is meant to help assure children's rights can result in the following:

- o less instructional time for each child;
- o placement of children in new settings before staff has been trained to work effectively with them;
- o children being in settings with no resources or materials adapted to their needs;
- o inability to remove handicapped students from the premises as rapidly as any other child in an emergency.
- o parental loss of confidence in the schools, in some instances, as a result of educators asking them for their opinions on their child's placement and program;
- o an apparent dismantling of special education promulgated not in the interest of individual children but rather in the interest of stretching ever-shrinking dollars.

These are just a few of AFT members' concerns which are catalogued in more detail in our testimony on P.L. 94-142 given before the House Subcommittee on Select Education on October 9 of last year. As nothing has changed in the situation in the schools depicted in that testimony, we hope you will consider it as an addendum to these remarks. A copy is attached.

Although P.L. 94-142 has had some positive effects, several of its provisions have done great harm and must be revised or eliminated immediately. We maintain, moreover, that the only way P.L. 94-142 will ever work in its present form is with a massive infusion of additional federal funds totaling several billions of dollars.

Evidence of this can and will be pieced together from various sources. But first let us raise a concern about research on P.L. 94-142 conducted by BEH which you may want to take steps to correct in the new Office of Special Education. From our perspective, it appears that BEH was increasingly restrictive not only in the type of research it allowed on implementation of P.L. 94-142 but even more so in the use and exposure of any data which did not support its basic premise that with minor exceptions, implementation of P.L. 94-142 is progressing smoothly with great benefits accruing to all concerned. The hard data, we believe, which would support or negate our reports were not sought by BEH which, to the best of our knowledge, has consistently avoided research on school, classroom and student outcomes as affected by aspects of the P.L. 94-142 mandate. Even its data collection from the states on monitoring efforts, enforcement and compliance is less than adequate as recently reported by the Education Advocates Coalition made up of 13 advocacy organizations. To date, for example, we have not been able to get data on the number of teachers and other staff who have received inservice education related to their responsibilities under this legislation and their knowledge of special education. Such data, we believe, would prove that inservice training is so minimal as to have the law potentially result in a dismantling of special education because educators have not been trained adequately, or in most instances, at all, to assume new roles required of them as a consequence of P.L. 94-142. Instead, BEH offered us figures only on numbers of persons "projected" by states to be targeted for training and dissemination activities. Most SEAs will tell you that they were ill-equipped to assume their 94-142 monitoring and enforcement function and consequently have been forced to give inservice training a low priority. Misgivings about the lack of inservice education, as well as other problems associated with P.L. 94-142, are expressed in a report entitled, "A Study of Teacher Concerns with P.L. 94-142," completed under the auspices of BEH in 1978. Again, to the best of our knowledge, the findings of this report and its five major recommendations of steps BEH could take (see Appendix 1) to alleviate teacher concerns were buried and ignored. Another report, "Case Study of the Implementation of P.L. 94-142," done by Education Turnkey Systems for BEH and dated May 31, 1979 was mysteriously reported in the press (e.g., Education Daily) as finding that P.L. 94-142's implementation is progressing nicely. Yet, a close reading reveals the following facts:

- "In all sites, moderate to large numbers of students had to wait for assessment and placement because of the large amount of staff time needed for 'processing' students."
- "In most sites, particularly during the school year 1978-79, regular education teachers became more hesitant to refer students with suspected learning problems, because of the 'processing' burden or because of their perception that such children would not be placed before the end of the school year."
- "During the 1978-79 school year...virtually all IEPs written for transition students (e.g., those transferring from middle schools to high schools) had to be revised when the students moved; these revisions involved large numbers of teachers and other staff."
- "In most instances, parental involvement in IEP meetings is limited to attendance and approval, with limited interaction concerning the development of specific instructional programs."
- "Many parents who attend central office or building meetings feel intimidated by the presence of large numbers of LEA staff or feel the process is too complex."
- "The IEP meeting has become essentially a formal mechanism for complying with the law rather than for involving and informing parents."
- "In sites where formal due process hearings were conducted, the impact of the hearings upon the LEA staff involved and, to a lesser extent, upon the parents was traumatic, regardless of the outcome. The threat of hearings generated an enormous amount of paperwork and documentation of the special education process, as staff developed coping strategies to protect themselves from legal reprisals."

Implicit in the tone of these findings is an indication that although a bureaucratic process is clumsily being put in place, proof of its positive effects on education is less than obvious.

Finally, let us mention a third BEH study which we feel it most important that this Committee have the opportunity to examine carefully. Its original title was "Local Implementation of P.L. 94-142." This was a four-year study designed as an in-depth examination of local school systems and incidentally is, we believe, the only longitudinal study of the law's implementation in public schools. In April of this year the first report of findings was submitted to BEH describing the status of implementation in 22 LEAs in nine states during the 1978-79 school year. In the draft report which we were asked to review last winter, we saw that the situation we have reported in the schools was confirmed. Yet here again the data has not been released by BEH or OSE. We hope that it will be cited extensively and copies provided this Committee during these hearings. If not, serious questions should be raised as to why this evidence has not been reported. Our suspicions concerning the fate of this study's findings were raised as a result of several factors. It was said that submission of the draft report in December, 1979 raised a flurry of concern in some quarters at BEH because it exposed the weaker side of the law and that one remedy suggested for diluting its effect would be to rename it, "Case Studies of Implementation of P.L. 94-142 in Selected Sites." The difference between this and what was intended to be a fairly generalizable study of "Local Implementation of P.L. 94-142" is not difficult to see. In addition, anyone who reads the body of the report carefully will see that the summaries and conclusions have been muted somewhat, although they too reveal problems. The study was carried out with great integrity but it would seem that these researchers were aware that the "kid glove approach" would be required to keep their findings from being totally buried at BEH.

Consequently, it appears that serious problems have arisen from the fact that BEH has been responsible for both implementation and evaluation of P.L. 94-142, given that the agency has persistently clung to the position that the law in its present form must be made to work at all costs and that any evidence to the contrary endangers the rights of handicapped persons. It is our understanding, by the way, that the focus of the longitudinal study mentioned above has now been changed. Future studies are to be descriptive rather than analytical or interpretive. Instead of a continuation of in-depth studies of LEA implementation of P.L. 94-142, we will get technical assistance documents on "boundary crossers," which is a fine idea few schools will be able to afford, and service delivery related to medical/educational needs. For the most part, BEH sought descriptive data which it evaluated for itself. The evaluator, we suggest, has been much less than objective.

We believe that empirical studies critical of the effects of P.L. 94-142 or its implementation were suppressed by BEH and that studies which have the potential to produce such results are being assiduously avoided. We hope that this Committee will look into this matter and insist that the research orientation of the new Office of Special Education be different. We are willing to put our reports of serious problems growing out of 94-142 in the schools to the test of empirical research and feel OSE must do the same.

Finally, we must discuss our problems and our options. At the root of all these problems is money. With the infusion of several billions more federal dollars to support continuous inservice training; appropriate support personnel and services; adequate equipment, resources and materials, with adaptations when necessary; additional record-keeping, planning and reporting time; additional staff to handle the administration of the law and so forth, P.L. 94-142 could be made to work (see pp. 4-5 of attached House testimony for details of what would be required to make P.L. 94-142 operate effectively in the schools). The AFT would make this option its first choice because it could not help but foster the goal of an appropriate education for all handicapped children. If, on the other hand, Congress feels an increased appropriation of several billion dollars for P.L. 94-142 would not suit the mood of the country, it cannot turn its back on state and local governments who face this same public sentiment. Let us consider the prospects of Congress ignoring the serious financial restraints the SEAs and LEAs are already operating under.

The general financial condition of the schools, particularly our urban schools where the majority of handicapped students are, is well-known. Frequent school closings, loss of tax bases, rising inflation, mismanagement of funds, and local governments on the verge of bankruptcy all contribute to weakening the institution of public education. As reported by the National School Boards Association in "A Survey of Special Education Costs in Local School Districts," released in June, 1979:

- o Local school district budgets for special education are rising at the rate of 14 percent per year, or twice as rapidly as instructional and operating budgets (7 and 8 percent per year);
- o The cost of placing a handicapped student in a non-residential setting outside the district's facilities is four times the average per pupil expenditure for all students and in a residential setting is eight times the average per pupil expenditure;
- o The cost ratio between education of the handicapped and so-called regular education is at least two to one nationwide and this is likely to be a conservative estimate because districts often do not calculate all costs, such as transportation, related to education of the handicapped;
- o Out of an average per pupil cost of $3,638 annually for handicapped students, the federal government will be contributing only slightly over $200 per child;
- o The nationwide cost of special education for the 1978-79 school year was projected to be $5 billion--if one adds the need for better services to reach compliance and the costs of inflation, you can get some idea of the financial resources which would be required to give P.L. 94-142 a chance to work.

In New York State alone, the education department recently estimated the cost of educating children with handicapping conditions for the 1980-81 school year at close to $1 billion, with the state contributing $415 million, local districts $472 million and the federal government $60 million. Again, we offer the reminder that if the mandate were fully met, these costs would have to be much higher. In January, 1980, the Institute for Research on Educational Finance and Governance at Stanford University published a report on "Policy Effects of Special Education Funding Formulas" in which the major reasons for the greater costs of educating handicapped children are outlined as:

- Additional and related special education services--the majority of handicapped children receive special education programs and services in addition to being enrolled in a regular education program. As a result, the total cost of their education includes both the cost of the regular program and the cost of special education programs and services.
- Special classes--with smaller student/teacher ratios, the bulk of the classroom costs (i.e., teacher salary and benefits, operation and maintenance expenses) do not vary with the number of students in the room, which greatly increases the cost per student.
- Multiple special education services.
- Residential programs--not only are educational services needed, but a complete set of housing, feeding, self-help skill training, vocational and recreational services may also be required, and it is not uncommon for the annual cost per student in these programs to reach $25,000.
- Identification, assessment and educational planning--this is often a lengthy and expensive step not required for non-handicapped children.
- Newly mandated procedures--child-find; IEP development; due process; local planning, record-keeping, and reporting requirements involve additional costs not required for non-handicapped children.
- Additional staff support and training--specialized staff to provide direct and indirect assistance to handicapped children, then parents, teachers and other students and school personnel and to conduct inservice training are additional cost factors.
- Greater age span--P.L. 94-142 and similar state legislation mandate special education programs for children ages three to twenty-one, a larger age range than regular education.

In enumerating these costs, our purpose is certainly not to begrudge these additional responsibilities but to emphasize the significant expenditures required in special education, over and above regular education. New York City's fiscal crisis is by now legendary. A federal district court ruled in Lora vs. Board of Education that the city's financial plight, however, provides no excuse for violating the statutory and constitutional rights of emotionally disturbed students. In discussing this case, a recent American School Board Journal article reports:

> "The court objected to the school system procedures for placing such students in its 'special day schools,' which are largely segregated. Lack of money is no reason for these practices, even though the court acknowledged 'the inescapable fact that to spend substantially more on this pupil population may well necessitate a sacrifice in services now afforded children in the rest of the system' /emphasis added/. The price tag that comes with the court's decree has begun to mount, and this includes notifying the children's parents and the New York City school system's entire professional staff of students' rights, conducting an inservice training program in the 'bias free mainstreaming' of these children, and providing an advocacy or ombudsman system for affected parents and children.

In addition to this type of court decree and others which, for example, require school systems to provide year-round education for handicapped students when needed, schools' non-compliance with P.L. 94-142 is resulting in numerous suits being filed against them which will likely mean the loss of added billions of dollars. One city school system in New York State is being sued for program deficiencies on behalf of 65 trainable mentally retarded youngsters, and the award being sought is [illegible] million in compensatory damages and $3 million in punitive damages. In urban areas particularly, excessive amounts of staff time are being spent in court-related activities. Such court cases will continue to deplete schools' already meager resources. Compounding funding problems is the fact that the elimination of state revenue sharing has had the effect of reducing federal aid to education by somewhere in the neighborhood of $750 million. In some states, such as Pennsylvania, half of the funds received through state revenue sharing were used for education of the handicapped. Because of this, we now not only have no growth in the federal contribution to special education, we actually have a reduction.

This Committee surely knows the irrationality of expecting local and state school systems in today's economy to come up with billions of dollars in new monies to support widely expanded services in special education. We certainly wish as much as anyone that it could be done. But holding out false hopes and failing to address rights of handicapped students realistically would, we feel, be a cruel hoax. To the chagrin of theorists and social thinkers through the ages, life does not always coincide with reason or dreams. Nor has any institution been changed overnight. If the federal government is not prepared to rush substantial life-giving dollars to the P.L. 94-142 mandate, several serious consequences are possible. First, we fear that the number of disabled children whose education is actually being diminished as a result of some 94-142 provisions will continue to grow to alarming proportions. They will lose many benefits won within special education over the last three-quarters of a century, ironically in the name of their own civil rights (see attached House testimony, October, 1979 for specific examples). As courts expand their interpretations of an already broad legislative mandate, schools will either be unable to meet the costs or will be forced to draw from regular operating budgets. Arguments will made that services to handicapped children need only match those offered non-handicapped. Within the current financial trend, both regular and special education could sink to such levels that public education itself could be undermined.

To those who do not want to address problems in the context of the real world of the schools, who prefer to let the pot simmer, we offer reminders that a backlash could seriously damage rights of the handicapped. That the simmering pot could explode is evidenced by a New York Times editorial on July 21, 1980 entitled "Going Wrong with Handicapped Rights" (see Appendix 2). It maintains that in relation to P.L. 94-142 the federal government has promised more than it can deliver and that since states and cities must bear the major portion of the cost, they should be allowed to balance the needs of the handicapped against the compelling claims of all children. It goes on to say:

> "It is only right to remedy a pattern of neglect. But is is perverse for Congress and the courts to define an 'appropriate' education only for the handicapped and to write rules that result in the deprivation of other children. The allocation of scarce local resources is necessarily a political matter, best left to local government. If Washington wants to help, the right way would be through special education grants that can be used at local discretion. It is no favor to the handicapped to make them the beneficiaries of unique rhetorical rights and the object of local resentment.

If the New York Times is prepared to take this stance, consider the emotions and frustrations fermenting throughout the country. It is this situation and its likely reaction which makes us so strongly oppose resistance to opening P.L. 94-142 to close examination. If Congress cannot back up this mandate with adequate resources, it should be exploring ways of preserving its intent and perhaps cutting back on unnecessary bureaucratic processes. Rights need guarantees but guarantees must not be allowed to masquerade for rights. We feel it is safe to open P.L. 94-142 because of the back-up of Section 504 and precedents set through various judicial decisions. To begin with there should be at least a six-month moratorium on penalties for non-compliance with P.L. 94-142 to allow SEAs and LEAs to report the true impact of this legislation. Documentation could be given as to exactly what the schools had been able to accomplish with their present resources and what requirements they had not been able to meet and why. Out of such an examination could come a synthesis which would provide assurances of rights for handicapped and non-handicapped as well which could be implemented in the schools without undermining the very foundations of education. Many forces are operating in the special education arena -- often with conflicting purposes. Only Congress has the ability to remove emerging roadblocks to progress and establish sensible means of achieving quality education for handicapped and non-handicapped students alike.

To begin this process, we believe the IEP requirement should be eliminated as it has resulted primarily in a reduction of child-teacher contact time. The cost of this process in terms of education dollars and staff and parental time is in no way justified by the research reports showing it surrounded by confusion and resentment. More importantly, it has been shown not only to be basically unproductive but even detrimental to children's education. In general, the only parents who seem to benefit from involvement in the IEP process were those who always have actively pursued their rights in the school system. In suspending this requirement, studies might be undertaken to explore reasonable means of assuring individualized educational programs.

At the same time, some steps must be taken to prevent least restrictive environment placements from being used as a cost-saving device without insuring that the placement is truly in the best interest of the child, that the receiving teacher is adequately trained to work effectively with the child and that the receiving classroom is adequately prepared and equippped. Inservice training should be required by law for teachers and other school personnel assuming new roles and responsibilities as a result of least restrictive environment (LRE) placements. This training must be completed prior to placement. The many abuses of LRE placements are indicative of the fact that this concept has little chance of working unless the law is expanded to detail the circumstances under which a less restrictive placement is appropriate. We refer you to pp. 9-10 of the attached House testimony for suggestions on what such guidelines might entail. Furthermore, much more research is needed on how the least restrictive environment concept is being implemented in schools throughout the country and the impact this is having on both handicapped and non-handicapped children.

We would recommend additional changes in the law including the right of teachers to initiate the due process mechanism as a child advocate when it is felt that neither the parents or LEA have acted in the best interest of the child, nor can they be persuaded to do so; the right of teachers to be accompanied by counsel who may question and cross-examine witnesses in due process hearings (BEH has ruled against this); and a statement prohibiting any provisions of P.L. 94-142 from violating existing collective bargaining agreements, as long as these do not infringe on the civil rights of handicapped persons.

Finally, we call your attention to a glaring loophole in P.L. 94-142. Although deadlines are affixed to most of its provisions, no mention is made of a time limit which cannot be exceeded between the time a child is referred for evaluation and the time that evaluation actually takes place. Not all states have such time restrictions, and in those that do, they are rarely enforced. As a result, large numbers of children are lost in the limbo of referral waiting lists.

In conclusion, we urge Congress to support the rights of handicapped persons espoused in Section 504 of the Rehabilitation Act 1f 1973 by increasing appropriations under P.L. 94-142 to several billion dollars. We recommend close examination of all provisions of P.L. 94-142 and their effects on handicapped students, non-handicapped students, school and local and state finances, and public education itself. A utopian outlook which makes no attempt to find realistic means of plugging theory into actuality must necessarily collapse in upon itself. That handicapped persons are entitled to a free appropriate public education need not be utopian or theoretical. It should be fact. The theoretical premises which must be scrutinized and experimented with are the avenues by which we can best accomplish this goal. Responsible action will resolve emerging problems; neglect could make our present problems seem trivial.

TESTIMONY OF
WALTER TICE, VICE PRESIDENT
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
TO HOUSE SUBCOMMITTEE ON SELECT EDUCATION
ON P.L. 94-142

10/9/79

I am Walter Tice, a classroom teacher in Yonkers, New York and vice president of the American Federation of Teachers, AFL-CIO. On behalf of the 520,000 teachers, paraprofessionals and other education personnel who are members of AFT, I would like to thank you for the opportunity to offer our views before this Committee on P.L. 94-142, The Education for All Handicapped Children Act.

Because we believe strongly in the right of all handicapped persons to a free appropriate public education, we supported passage of P.L. 94-142 in 1975. Yet, reservations we expressed at that time about certain aspects of this law have proven to be well-founded. We would like to use this opportunity to point out how several sections of the law designed to protect handicapped student's rights in reality result in just the opposite.

The root problem underlying the negative effects P.L. 94-142 has had is insufficient funding. If there were billions of dollars available to the schools through this legislation, problems arising from various requirements of the law would be overcome. But obviously this is not the case. In its "Survey of Special Education Costs in Local School Districts: An Assessment of the Local Impact of the Education for All Handicapped Children Act," the National School Boards Association in June, 1979 reported that local school district budgets for special education are rising by 14 percent a year as compared to only a 7 percent per year raise in the instructional and operating budgets. The Committee is no doubt aware that many school systems were besieged with severe financial problems prior to implementation of P.L. 94-142. Likewise, you know the public mood is one of maintaining or cutting back on spending, including education dollars, at both the state and local levels. This leaves most school systems with one choice — new monies needed for special education must come, at least partially, from the regular instructional or operating budget. These budgets, especially in urban areas where the majority of handicapped students are and where special education costs are the greatest, in many cases were already pared to the bone.

While the annual per pupil expenditure for regular education in FY 1980 will average $1,819, the same for handicapped pupils is $3,638. The excess cost contribution to be made by the federal government in fiscal 1980 will be $218 per child or slightly less. This leaves the LEA to find, on the average, an extra $1600 per handicapped student. These averages don't take into consideration the added costs of due process hearings, transportation, and additional staff time.

Here we want to point out very clearly that we are not suggesting that full educational services as mandated by P.L. 94-142 should be withdrawn from handicapped persons. On the contrary, we want to maintain such services but eliminate requirements which serve to diminish the quality of education provided both handicapped and non-handicapped students.

As you will see from the policy resolution attached which was passed at our 1979 convention, the 2500 delegates who attended called for modifications in P.L. 94-142 which would first provide adequate federal monies to meet the new mandate; second, eliminate the IEP process which has only resulted in further reducing child-teacher contact time; and third, prevent least restrictive environment placements from being used as a cost-saving device without insuring that the receiving teacher is adequately trained or informed or the receiving classroom adequately prepared and equipped. We would like to expand on these last two problems.

IEP

A 1978 AFT convention resolution calls for legislation that will remove the "onerous mandate" of individualized education programs and "allow teachers, as professionals, to plan appropriate educational activities for the children in their classes." Does this mean teachers do not want to teach handicapped children or that they do not want to individualize instruction or that they do not want parents to know whether their children are receiving appropriate services? Of course not. The IEP is a very fine sounding proposal which looks nice on paper but when actually implemented in the schools becomes a nightmarish disaster.

If you so desired, we could submit an extensive list of problems associated with development of IEPs. But let us refer you to the IEP section in the "Case Study of the Implementation of P.L. 94-142" prepared for BEH by Charles L. Blaschke at Education Turnkey Systems, Inc. This study reported that IEPs for the most part are developed around learning activities which can be most easily provided; the time teachers spend writing IEPs is significant, as is the time the teacher spends in revising the IEP when, as is often the case, the teacher who implements the IEP is not the one who wrote it; parental involvement in most instances is limited to attendance and approval, with little interaction on the development of specific instructional programs; many parents feel intimidated by LEA staff or feel the process is too complex; and the IEP meeting has become essentially a formal mechanism for complying with the law rather than for informing and involving parents.

If schools could hire as much personnel as needed, the IEP process might create no problem. But it is usually teachers who must make the parental contacts (this may involve numerous phone calls and even visits to their homes), who usually must write up a tentative IEP prior to the meeting, who often have to leave their classrooms to attend such meetings, and who then write up the final IEP. The effect on instructional contact time with children, teacher planning time and teacher morale is devastating. Consider a speech and hearing therapist. This teacher used to have an average caseload of 60 to 80 students. With increasing numbers of handicapped children being identified but a shortage of funds for necessary personnel, this caseload may now go over 125. The teacher therefore is involved in developing and/or reviewing IEPs for 125 children. It is not hard to imagine how all of the duties associated with getting an IEP ready for even one child involves substantial time but now multiply this by 125 or even 60. Yes, this is certainly difficult for the teacher but imagine how much time the teacher actually has to work with children. They receive the least and the worst from the IEP process, no matter how ironic this may seem.

We must therefore recommend that the present IEP process be deleted from P.L. 94-142 or at least suspended until Congress can conduct a thorough investigation into the effect it is actually having on the education of handicapped children.

There possibly is an alternative which would allow the IEP process to work but it would be expensive and those funds would have to be provided by the federal government. The IEP process might accomplish its goal if it were required by law that:

1) All parental contacts required to set up IEP meetings were to be made by administrators and not by teachers, counselors, psychologists or other support personnel whose time should be devoted to working with children;
2) Special personnel be hired to attend IEP meetings and write up the individualized programs agreed to by the participating parties;
3) Teachers be provided with an additional preparation period during which IEP meetings can be held so as not to have these meetings keeping teachers out of the classroom and lessening the time they

[illegible]

spend in instruction (teachers could also use this time for consultation with support personnel and inservice education which are so sorely needed);

4) Administrators may not discourage teachers from listing on the IEP services, resources or equipment needed by a child simply because of their cost;

5) Teachers may challenge the effectiveness or appropriateness of an IEP for a child through the due process mechanism;

6) Every teacher will be guaranteed inservice education by the LEA on how to write an IEP;

7) IEPs clearly do not hold teachers liable if students do not attain the established goals;

8) The IEP is to be a brief, general statement of annual goals for a child, outlining various developmental skills or levels which the child will hopefully accomplish or reach. (Short-term instructional objectives should be deleted from the IEP as these must be flexible and should not require reassembling the IEP planning group each time a minor change is determined to be needed in a child's programs).

If the above conditions were to be established by law and supplemented by appropriate funding, the IEP process would be workable. Otherwise, it will continue simply to deprive children of instructional time, and the time they do have with the teacher will, despite the window dressing of the IEP, be much more poorly planned. Although our list of eight conditions frequently mentions teachers and support personnel, a careful reading will show each of these affects the quality of services provided children, not the self-interest of teachers.

Finally, we reiterate on this topic that we are asking for a suspension, deletion or revision of the IEP section in P.L. 94-142 because our members, regardless of the size of their school system, have consistently and with great concern reported that the IEP process is simply resulting in less education for handicapped children and increasing frustration for parents and school personnel.

Least Restrictive Environment Placements

Confusion over the meaning of this concept, as well as scarce dollars in a time of rapidly expanding special education costs, has led to abuse of least restrictive environment placements. Here again, AFT fully supports the concept of the least restrictive environment placement (often referred to as mainstreaming) for some children when done under the proper conditions. Despite the fact that there is no research to show that such placement is effective (see latest comprehensive study on this subject done for BEH by Wynne Associates in 1975), we support the idea on philosophical grounds. It makes sense that if a child can function effectively in a less restrictive environment, he or she should be able to go on to live a fuller, more normal life.

Yet the desperate financial condition of the schools has made a Dr. Jekyll and Mr. Hyde out of this requirement also. We have already cited in this testimony the fact that the average cost of special education is at least twice that of regular education. Normally, the more "restrictive" the education, the more expensive. Couple a situation of too few dollars with a law encouraging placement of handicapped children in least restrictive environments which just happen to be successively less expensive and imagine what is happening out there in the schools.

Not only are the parties involved in the IEP process usually totally ignorant of what the IEP is and how to do one, but the LRE requirement has created many new roles for school personnel and in an overwhelming majority of cases, no inservice education has been provided. You may be startled to know that in almost all workshops related to P.L. 94-142 which we do around the country for teachers, paraprofessionals, counselors and psychologists, it is the first and only inservice they have received.

Can this be said to be those educators' self-interest also — that they should be crying for inservice education? Here too it is children who are suffering. The special education teacher's role has changed; they are shifted to new responsibilities as more and more handicapped children are identified and enrolled in the schools. That the special education teacher can teach any handicapped child is a misconception. They specialize in various areas and the teacher who has been working with educable mentally retarded children may need extensive inservice training before being competent to work with trainable mentally retarded children. There are many other examples, all of which are envidenced by the growing divisions and strictures on certification within areas of special education. Also, as larger numbers of children are "mainstreamed," special education teachers are increasingly assigned to resource rooms. Two problems are common in this instance. Often the number of children the resource room teacher works with has risen to the point where the teacher can hardly give the individualized instruction intended, let alone help other teachers plan activities, lessons, and materials to be used with mainstreamed children. Even when there is time for this type of consultation, the resource room teacher who has not been trained to work with adults and received no inservice for this new role often is therefore ineffective. Regular teachers suffer even more by the lack of inservice training and the almost total lack of accessibility to support personnel.

Once more it is children who suffer. By the mid-1970s when P.L. 94-142 was implemented, there were many flaws in special education which led us all to support this law in the hope they would be corrected. Part of this goal has been accomplished. Testing procedures are improving, although the schools still do not have nearly enough testing specialists, diagnosticians, psychologists or counselors and although there is still no law or regulation which prevents an inordinate amount of time to go by between the time of referral and actual testing and diagnosis. Children should now have a better chance of "graduating" from the special education program into the regular one because of the reevaluation required at least once every three years. Yet despite its faults, special education in the mid-70s was a highly developed, specialized field, and the sophistication of services to handicapped children was growing by leaps and bounds. Now, after inplementation of P.L. 94-142, you have a situation in which most teachers feel inadequately trained to work with children given to their care or feel that they cannot do so effectively in the environment or setting or with the insufficient resources provided them. If teachers and other school personnel were an insensitive and uncaring lot, we could ignore this situation, stick these children in a corner somewhere and go about our business. Indeed the attitude of BEH and some advocacy groups has been that the law should not be touched for at least three or four years in the hopes that its bugs will work themselves out. But we who see these children's faces day in and day out, who know their dreams, their joys, their setbacks, we can not in good conscience sit back and see these hundreds of thousands of children used as guinea pigs. We implore this Committee not to be drawn down this avenue.

Instead, the least restrictive environment placement provision of P.L. 94-142 should be expanded to allow placement of a child in a less restrictive environment only if:

1) Receiving personnel, including teachers and paraprofessionals in special or regular education, have been informed of such placement and provided inservice training to enable them to work effectively with the child prior to placement;
2) The child's emotional, social and physical well-being are considered in addition to cognitive benefits in determining the placement of the child;
3) The LEA has assured availability of adapted resources; instruction on how to use them, if necessary; and access to support personnel, as needed;
4) The child's health and safety are guaranteed in the new placement situation;
5) School personnel are free of all liability which might result from a less restrictive environment placement which requires them to perform new or non-educational tasks;
6) Transitional programs are available to handicapped children, non-handicapped children or school personnel whenever needed, prior to placement;
7) Children can perform within the normally expected ranges of achievement within the placement setting;
8) Certified special education teachers and support personnel are available in ample numbers to assure that "special attention" can follow the handicapped child into the less restrictive setting;
9) Teachers have regularly scheduled release time for consultations with support personnel, whenever needed;

10) Scheduling of the educational program and buses conforms to individual needs of handicapped children and not vice-versa;

11) Assurances are given that regular class sizes will be reduced if special education students are assigned to them, that no more than three handicapped children will be placed in any one regular classroom to prevent potential for abuse, and that special education maximum class sizes not be exceeded;

12) It is recognized by all SEAs and LEAs that a less restrictive environment for many students, as opposed to a traditional setting, would be unproductive;

13) Safeguards exist to assure that funds designated for special education follow the child, even if in a less restrictive environment.

If the above mandates cannot be set by law, the present practice in growing numbers of school systems of "wholesale mainstreaming" could eventually progress to the point that we have accomplished little more than tearing down a system of special education it took this entire century to build, without replacing it with anything better. Perhaps we should keep in mind Horace Mann's warning that "one former is worth a thousand reformers."

We suggest that in this case also Congress would benefit from a careful investigation of how the least restrictive environment requirement is being implemented in schools throughout the country and the impact this is having on handicapped and non-handicapped children alike.

Reports to us from our membership in the schools indicate that the schools have been unable to obtain the monies needed to meet P.L. 94-142's mandate, that consequently there are extensive abuses of the law and a massive cover-up of these abuses by school boards and administrators. It must be remembered, however, that if they were to come forward with the true but tragic picture of what is going on in the schools as a result of P.L. 94-142, they would open themselves up to innumerable law suits, as well as to a cut-off of desperately needed federal funds. Perhaps a 6-month moratorium on non-compliance penalties should be called to allow SEAs and LEAs to report to Congress the true impact of this legislation. If the consequences of P.L. 94-142 are not seriously studied and its strengths and weaknesses documented, many children -- handicapped and non-handicapped -- will be denied a decent education. In these times, this is hardly a viable option. Congress must also reevaluate its commitment to education of handicapped children in terms of the paucity of funding offered to back up this much needed commitment.

We would recommend additional changes in the law including the right of teachers to initiate the due process mechanism as a child advocate when it is felt the parents or LEA have not acted in the best interest of the child and cannot be persuaded to do so; the right of teachers to be accompanied by counsel who may question and cross-examine witnesses in due process hearings (BEH has ruled against this); and a statement prohibiting any provisions of P.L. 94-142 from violating existing collective bargaining agreements, as long as these do not infringe on the civil rights of handicapped persons.

We could give many more examples of problems associated with P.L. 94-142 but this would involve submitting testimony of excessive length. For this reason, we ask for a thorough investigation of the law's impact in the schools and an opportunity to meet with committee staff at some future time to discuss various aspects of the law and how they are actually affecting children in the schools.

We have discussed here the major weaknesses of P.L. 94-142 in the hope that they can be overcome so that our mutual goal, the provision of a free appropriate public education to all handicapped children, can become a reality — not a paper pipedream. Thank you for this opportunity to express our views.

AFT Policy Resolution
1979 Convention

PL 94-142

WHEREAS, the AFT supports the objective of providing effective educational services to handicapped children contained in PL 94-142, and

WHEREAS, PL 94-142 (The Handicapped Children's Act) and the federal regulations created by H.E.W. to enforce it have created federal mandates on state and local school districts which have required the expansion of expensive services to handicapped children without supplying adequate funding thereby frequently necessitating serious cut-backs in services to non-handicapped children, and

WHEREAS, the complicated and time-consuming processes required by PL 94-142 have increased paper-work time for teachers, counselors and paraprofessionals and have resulted in the reduction of child-contact time, and

WHEREAS, the "least restrictive environment" mandate has resulted in the wholesale mainstreaming of handicapped children . . . without insuring that teachers into whose classes the students are placed are adequately informed regarding the placement or adequately trained prior to the placement, and

WHEREAS, the wholesale mainstreaming of handicapped children created by PL 94-142 has been beneficial to some children it has been educationally and emotionally harmful to other handicapped and non-handicapped children, and

WHEREAS, such serious harm is being done at this time by the improper implementation of PL 94-142 and its regulations;

RESOLVED, that the AFT, while continuing to support the objective of providing effective educational services to handicapped children, works to modify the provisions of PL 94-142 and its regulations in order to end the serious problems stated above, and

RESOLVED, that the AFT notify the above agencies of government that immediate investigation of these conditions and action to correct them should be taken within a short period of time, and

RESOLVED, that, in the event that corrective action is not taken within a short period of time,the American Federation of Teachers shall seek federal legislation to suspend immediately further implementation of the mandates of PL 94-142, in respect to the matters stated above, while local school programs for handicapped children and the federal moneys adhering to these programs continue, until:

1. The federal government provides every dollar of new moneys needed to implement the federal mandates.
2. All teachers and paraprofessionals who are or will be teaching mainstreamed students have the opportunity to complete the necessary professional in-service training.
3. A study on the full effects of PL 94-142 on handicapped students and non-handicapped students and its impact on the structures of state and local school district financing be conducted and made available to Congress before it acts to restore the PL 94-142 mandates. (1979)

APPENDIX I

Draft Final Report

For A Study of Teacher Concerns
With PL 94-142

Prepared For:

Bureau For Education of the Handicapped
(State Program Studies Branch)
DHEW

Prepared By:

Roy Littlejohn Associates, Inc.
1328 New York Avenue, N.W.
Washington, D.C. 20005

October 6, 1978

V. Lessons Learned and Recommendations

Before attempting to summarize some of the lessons learned by this study and formulate recommendations for the future, our own role and perspective needs to be clarified. Several points may serve to explain the role we adopted in undertaking this study, at first pointing out the position we did not adopt and finally stating the position we have chosen.

- We have not attempted to be the advocates of the teachers themselves.
- Nor have we attempted to be advocates of the law and its formulators, or of maintaining the law in any given form.
- And we have not been the agents of BEH attempting to insure compliance with PL 94-142.

Our study was not a part of any auditing process emanating from BEH. At the same time, we have avoided being the advocates of teachers and their problems with "management" at any level -- since, if for no other reason, the problems and organized political positions of teachers are quite diverse around the country. What, then, has been our orientation and our role in this action-oriented study?

- We have attempted to be the advocates of having teachers' concerns with PL 94-142 heard, listened to, and thoughtfully considered as further efforts at implementation proceed.

Thus if it appears that our reporting is biased from the teachers' viewpoint, and often seems to come down harshly on "management" (without giving the latter "equal time"), we admit to this fault -- because the purpose of the study was to discover and air "teacher concerns." It should also be pointed out that what we have reported are the perceptions of situations expressed by teachers, and no effort has been made (except almost incidentally at times) to "correct" those perceptions on the basis of other information.

Moreover, it should be pointed out that we did not have to be advocates of the new law or of mainstreaming and improved educational services for the handicapped. Many of the teachers contacted were strong advocates of that law, even more were in favor of mainstreaming, and almost all favored improved education for the handicapped (although not all put the same -- or highest -- priority on that goal).

Finally, our own position on changes in the law is entirely neutral. PL 94-142 is the law under which BEH now administers funds; but our function was not to defend or justify the law's provisions, nor conversely to probe for problems with a view to undermining the law.

With this position stated, it should then be noted (in anticipating the form of our recommendations) that we are avoiding suggesting specific changes in the law. In truth, far more important at present are clarifications and the examination of allowable variations.

We obtained many recommendations from the teachers contacted. In some instances these were systematically spelled out -- for example, by the discussion group in Eastern Metropolis -- and came close to representing a position on the law by political spokespersons. In our own recommendations we have avoided, for the most part, the type of specific suggestions proposed by such teacher groups. Instead, we have attempted to speak to strategies and future lines of action that can begin to experiment with the specific kinds of changes advocated by those groups. However, in a few instances we have found specific recommendations of teachers to be insightful enough and of such general applicability that we have incorporated them into our recommended strategies.

Important Lessons

None of the members of the research team has been a practicing educator in the public schools of the United States in recent years. None is an expert in the education of the handicapped, in mainstreaming, or in the provisions of PL 94-142 and their rationale. Therefore, some of the lessons learned by the team may be common knowledge among those more expert and experienced. Nevertheless we present them as a backdrop to our recommendations.

- Priorities of teachers are heavily weighted by their sense of professional values and knowledge of professional practices. Bargaining for time and assistance to cope with new responsibilities is partly -- if not totally -- a matter of this identification with a value system. As in any institution and profession, of course blinders and recalcitrance to change are to be expected. But cooperation, not coercion, is most frequently cited by teachers as the key to fostering mandated change. This approach proceeds from the assumption that professionals do not have to be forced to change their ways if groups of people are working together to achieve professional goals.

- Information about PL 94-142 has spread with great unevenness, not only across different States and LEAs, but within LEAs. And even where information has been provided and assimilated, there are many unanswered questions being asked and many requests for interpretations of the law being posed.

- LEAs vary greatly in their facilitation of communication and in their support of teams of teachers working together on educational problems at the building level. And schools -- buildings -- also vary greatly in this regard.

- LEAs vary - as do schools - in the ways they facilitate working relationships between regular ed and special ed teachers. Some have sub-district arrangements for crucial services; some are highly centralized in coordinating special ed personnel and services; others are highly decentralized in emphasizing organization of special ed services and relationships between regular and special ed at the building level.

- Priorities for, and experiences with, educating the handicapped, and experience with mainstreaming, vary greatly across States and LEAs in the country -- and within LEAs, across schools. Some States have laws which predate PL 94-142 and which mandate educational rights of the handicapped and efforts to provide their education in nonsegregated settings. Other States are only beginning to draft such legislation, under impetus provided by PL 94-142.

- In the first year of implementation, there was tremendous variability in the involvement by teachers -- and in the pressures they felt -- in assisting their LEAs and their schools to achieve compliance with PL 94-142. Even more, there was great variability in the pressures felt by special ed and regular ed personnel; and for the most part special ed felt the greatest impact on their day-to-day functioning in the first year of implementation.

- An audit process, always necessary in some form where financial accountability is involved, can generate forces that (at least in the eyes of the teachers feeling the greatest impact) can hinder and weaken resources for education of the handicapped. Moreover, "audit" and "compliance" have different meanings and priorities for LEA administrators (worrying about program budgets) than for teachers attempting to deliver in the educational process while prompting themselves to question old ways and try new ones. The impact of an audit on the service-delivery level (i.e., "on the line") needs to be strongly considered as its requirements and procedures -- and time dimensions -- are defined.

- (A "lesson" based on our own judgment as professional action-researchers.) A law which defines rights of a target group and which also calls for new and far-reaching responsibilities from another group, should speak to the rights of all responsible parties. Teachers are not sure what "rights" go along with their responsibilities under PL 94-142. In the first year of implementation, their questions in this regard were not being answered to their satisfaction.

Recommendations

During the course of the field work a number of interesting ideas were uncovered on future steps for implementing PL 94-142. The recommendations on future strategy we are presenting have in common the assumptions that:

- Beyond our present airing of "Voices from the Classroom," teachers should continue to be heard and called upon for their knowledge and experience as planning and action proceed.
- Future steps should be conducted in the spirit of, and with procedures that permit, continued learning about educating the handicapped in the "least restrictive environment" and the application of this knowledge in buildings and classrooms around the country.

1. Create a Forum for Building Knowledge and Sharing Experiences

Teachers manifested a great desire, not only to be heard, but to hear from others like themselves -- to learn what is happening among their peers as problems of mainstreaming are addressed. They felt strongly that most orientation workshops on PL 94-142 had not gotten to the teacher level. But this complaint was only the tip of the iceberg. For many teachers wanted to be called upon in the future to share more than their concerns. They wanted to share lessons they are learning through classroom and building - level experiences with mainstreaming and with meeting the requirements of PL 94-142.

We recommend that a project be instituted by BEH which would: (1) identify (on a regional basis) exemplary classroom/building experiences with mainstreaming; (2) invite up to 30 teachers from a region to appear and share their experiences at a 2- or 3-day regional workshop or retreat; (3) conduct 4 such regional workshops around the country; (4) document the workshops and disseminate this documentation; (5) instruct participants to follow through in their LEAs by making efforts to share the workshop experience with their peers. In various LEAs, we heard the following additional thoughts on this basic idea:

- Call on several people from the same building to attend -- so that exemplary total-school programs are represented.
- But be sure to include individual teachers, making exemplary contributions, who teach in less exemplary schools.
- And don't overlook individual teachers in most difficult and isolated settings who have a strong desire to learn how to meet the requirements of PL 94-142.

The specific next-step project proposed would be only a first building-block in the development of an ongoing network of forums for developing and disseminating grass-roots knowledge regarding mainstreaming among teachers, schools and LEAs across the country.

2. Create a Teachers' Review Body at The LEA Level

In the implementation of the law, a condition has developed which fosters largely administrative interpretations of compliance requirements. At the same time, State and LEA administrators are not clear what the law implies or requires in many areas; but as local policies are established and effected, the teachers' perspectives are not adequately considered. We recommend that BEH sanction and support be given to the creation of a teachers' review committee, addressing problems of implementation, in every LEA. A Teacher Review Body (committee or board) need not have dictatorial or policy-veto powers in order to have a positive influence on the climate for implementation in LEAs. It can ensure that as policies are formed on IEPs, record-keeping, diagnosis... -- all areas of policy impacting on special and regular ed teacher roles, and especially on existing teams in buildings -- the teachers' perspectives and professional values are recognized.

Even military organizations have instituted procedures for grass-roots inputs on problems of morale etc. -- procedures which ensure that information on perceived problems is delivered from company level to corps level (in spite of the implied threat to commanders in between).* And educational institutions should be far less command-control systems than military organizations are.

---

* At least this was true during Korean War days, when one of the authors of this report served on a "feedback" body -- providing information which, admittedly, "blew the minds" of battalion and regimental commanders, since, of course, there could be no problems in their units.

We recommend that each building in an LEA have a representative to such a body. However, an elected executive committee of the Teacher Review Body might be the smaller group actually meeting to review pressing issues (while building reps would be responsible for delivering information to the smaller body).

3. Create Regional Assistance Teams

We recommend that a national effort be undertaken to provide substantive assistance on a regional basis in specific problem areas identified with PL 94-142. Because of existing, and potential future, unevenness in State efforts at disseminating information, preparing for training etc., we believe this assistance should be organized on a regional basis. It may benefit from, and tap the resources of, the effort proposed under Recommendation #1; but a separate effort to provide regional assistance in crucial problem areas should be instituted by BEH. Assistance should be directed to both State and LEA levels but should be concentrated on the LEAs. Problems addressed should include:

- Training regular ed teachers for new responsibilities in mainstreaming (developing curriculum and/or delivering training).
- Re-training special ed teachers....(developing curriculum and/or delivering training).
- Assisting with IEP procedures (and assisting LEA efforts to develop efficient and effective IEP procedures).

4. Develop and Disseminate Guidelines on Documentation and IEP Procedures

While technical assistance with the concrete problems of implementation is provided at the regional level, we recommend that BEH proceed at the national level to develop materials (which may be applied and delivered by regional personnel, as well as otherwise disseminated) to guide LEAs in facing the formidable problem of the IEP and its documentation. This effort should not be dictatorial or lead to a standard federal package. In fact, many LEAs have record-keeping systems and procedures for IEPs which they may wish to share as contributions to national guidelines; and any external guidelines must be compatible with State and local systems. But many more LEAs doubtless would welcome an effort by outsiders to give structure to IEP procedures with a view to making them efficient, effective and minimally time-consuming.

5. Create a Review Office at the National Level

A law once on the books means whatever judges and courts -- right up to the highest tribunal -- say it means. But this does not mean that the administrators of a law should abdicate their responsibilities for continuing to interpret its mandates. At present, many teachers feel they are being abandoned by fellow educational professionals, at the local. State and Federal lvels, as administrative imperatives, along with the rulings of judges, dominate the drama of implementation. In Eastern Metropolis the feeling was strong that the professional knowledge and experience of teachers was given no consideration whatsoever as implementation of PL 94-142 proceeded. They felt that teachers "on the line" could not find a sympathetic professional ear at BEH since that agency currently was allowing the law to find its course in legal actions.

We recommend that a National Review Office be established by BEH to continue to weigh implications of the law, consider important issues and ongoing controversies, and publish current positions regarding interpretations. Although this office need not be a part of BEH itself, it should be supported by that agency and sanctioned to develop positions that will be used by BEH in monitoring compliance. This National Review Office should be continually informed by the information and knowledge being developed and shared through the network advocated in Recommendation #1.

Reviewing some of the specific problem areas cited by teachers, and especially by the teacher discussion group in Eastern Metropolis, some of the priority problems this office should review in early implementation phases are:

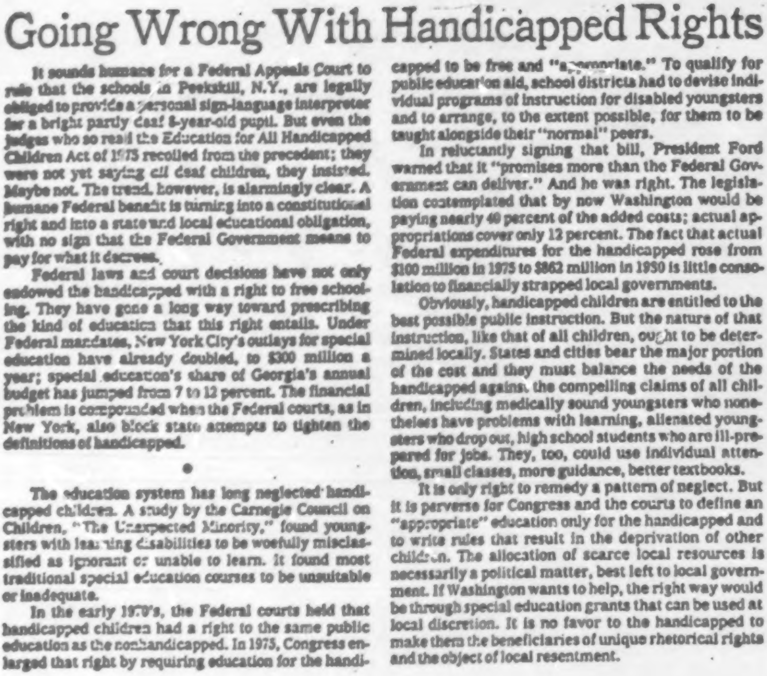
- The definition of "least restrictive" (developing guidelines for permissible variability).
- Necessary staff development and staff supplementation (developing guidelines for this requirement).
- Optional approaches to meeting problems of increased workloads.
- Teacher participation in the IEP (guidelines for permissible variability).
- Due process for teachers: a national professional position from BEH regarding the rights of teachers under PL 94-142.

The Review Office should not, in our view, be constituted to receive and formulate interpretations of State and local problems of compliance on a case by case basis. But it should prepare for wide distribution interpretive guidelines which will be used when audits do take place; and these periodically updated guidelines should be informed constantly by what is happening in implementation (the priority problems; the varied local interpretations) in LEAs throughout the country.

Our Federal system sanctions tremendous flexibility as national laws are enacted and then catalyze varied actions in the diverse states and localities of our nation. In effect, properly functioning, our system allows us to learn from one another as the general mandates of laws are translated into myriad experiments in achieving common goals. Therefore, we are not proposing future actions that will standardize and rigidify the requirements for implementing PL 94-142. We are recommending procedures that will promote a rich and open learning process with regard to mainstreaming in education of the handicapped. And we are also recommending procedures that will promote the development and exercise of responsible leadership in this pursuit. Finally, we wish to see teachers from the classroom drawn into that open learning process and into that exercise of leadership.

NEW YORK TIMES
July 21, 1980

APPENDIX II



Going Wrong With Handicapped Rights

It sounds humane for a Federal Appeals Court to rule that the schools in Peekskill, N.Y., are legally obliged to provide a personal sign-language interpreter for a bright partly deaf 8-year-old pupil. But even the judges who so read the Education for All Handicapped Children Act of 1975 recoiled from the precedent; they were not yet saying *all* deaf children, they insisted. Maybe not. The trend, however, is alarmingly clear. A humane Federal benefit is turning into a constitutional right and into a state and local educational obligation, with no sign that the Federal Government means to pay for what it decrees.

Federal laws and court decisions have not only endowed the handicapped with a right to free schooling. They have gone a long way toward prescribing the kind of education that this right entails. Under Federal mandates, New York City's outlays for special education have already doubled, to $300 million a year; special education's share of Georgia's annual budget has jumped from 7 to 12 percent. The financial problem is compounded when the Federal courts, as in New York, also block state attempts to tighten the definitions of handicapped.

●

The education system has long neglected handicapped children. A study by the Carnegie Council on Children, "The Unexpected Minority," found youngsters with learning disabilities to be woefully misclassified as ignorant or unable to learn. It found most traditional special education courses to be unsuitable or inadequate.

In the early 1970's, the Federal courts held that handicapped children had a right to the same public education as the nonhandicapped. In 1975, Congress enlarged that right by requiring education for the handicapped to be free and "appropriate." To qualify for public education aid, school districts had to devise individual programs of instruction for disabled youngsters and to arrange, to the extent possible, for them to be taught alongside their "normal" peers.

In reluctantly signing that bill, President Ford warned that it "promises more than the Federal Government can deliver." And he was right. The legislation contemplated that by now Washington would be paying nearly 40 percent of the added costs; actual appropriations cover only 12 percent. The fact that actual Federal expenditures for the handicapped rose from $100 million in 1975 to $862 million in 1980 is little consolation to financially strapped local governments.

Obviously, handicapped children are entitled to the best possible public instruction. But the nature of that instruction, like that of all children, ought to be determined locally. States and cities bear the major portion of the cost and they must balance the needs of the handicapped against the compelling claims of all children, including medically sound youngsters who nonetheless have problems with learning, alienated youngsters who drop out, high school students who are ill-prepared for jobs. They, too, could use individual attention, small classes, more guidance, better textbooks.

It is only right to remedy a pattern of neglect. But it is perverse for Congress and the courts to define an "appropriate" education only for the handicapped and to write rules that result in the deprivation of other children. The allocation of scarce local resources is necessarily a political matter, best left to local government. If Washington wants to help, the right way would be through special education grants that can be used at local discretion. It is no favor to the handicapped to make them the beneficiaries of unique rhetorical rights and the object of local resentment.

AMERICAN FEDERATION OF TEACHERS AFL-CIO

1. In your testimony, you mentioned that the only way for P.L. 94-142 to work in its present form would be with massive infusion of additional Federal funds totalling several billions of dollars. What amount do you consider appropriate?

As you note in your first question, AFT believes that a massive infusion of Federal funds amounting to several billion dollars would be necessary for P.L. 94-142 to work, as now written. Although this year's appropriation is nearly $1 billion, programmatic needs necessary to meet this law's mandate are at least three to four times greater than what is possible with present funds. We can make this estimate on the knowledge that the current twelve percent funding level does not come close to:

- Making sure all personnel now working with handicapped children are adequately trained to do so effectively;

- Allowing transitional programs and adapted materials in less restrictive environments when needed;

- Guaranteeing staff facilities and equipment required to provide programmatic and related services as needed for as long as needed--in some instances year-round;

- Assuring comprehensive evaluations of all children referred for special education;

- Assuring due process inquiries will not be avoided because of the cost involved.

This list could be greatly expanded. When P. L. 94-142 was originally passed, the forty percent authorization level, which we should have reached by now, indicates that its sponsors and supporters also recognized that its cost would be $3 to $4 billion.

2. You suggest the elimination of the IEP requirement. Since one of the major themes in P.L. 94-142 is the individualization of instruction, what would you suggest to replace the IEP?

In our testimony we said our first choice would be a Federal funding level of several billion dollars for P.L. 94-142 which would allow the schools to fully implement the law's requirement, including the IEP process. Without this funding, however, the IEP provision, for one, will actually diminish individualization. Instructional and therapeutic time with children is now in many instances less than before because of all the staff time spent in creating theoretical individualization on paper. We suggest this pretense in the form of present IEP procedures be abolished, that schools be required to individualize instruction for disabled students just as they should for any other child and that a committee be formed to study the extensive literature on individualization which exists and bring recommendations to Congress in a period of from six months to one year.

At some point it will be discovered that paper and meetings don't guarantee individualization. More important are reasonable class sizes; adequate support services and access to support personnel as needed; adapted resources; teacher planning time; and opportunities for good inservice education, in such areas as diagnostic and prescriptive techniques. You cannot legislate individualization; you must create the conditions which allow it.

3. What sort of time limits would you suggest between referral for evaluation and when the actual evaluation takes place?

The time between referral for evaluation and the time evaluation takes place should be no longer than 30 days. If a child indeed needs special education services, this means 60 days could pass before a child is placed because 30 days are allowed between evaluation, development of the IEP and placement. Even these timelines cause a child to miss two months of appropriate educational services.

Senator **Stafford**. Thank you. We really appreciate your being here.

This Committee does intend to make changes, as indicated in Public Law 94-142. If that were not our intent, we would not have bothered with this long series of hearings that we have and the hearings that we yet propose to have for the administration.

Your comments will be helpful, even those in connection with IEP which, frankly, was a Stafford idea to start with. If it does not work, we will drop it, as you say, or we will modify it to try to make it work. We want the education of handicapped children to be as good and to be as effective as the Nation can make it.

Our Supreme Court told us we have to do that anyway. We want to do it as well as we possibly can. This is a hard time to get more money, but Senator Randolph and I always try to get as much money for the handicapped programs as we can convince our colleagues to let us have. We will keep on doing that.

We may have some questions, almost certainly we will, but facing our time constraints, if it is agreeable to you, we will submit them to you in writing and ask that you submit them in writing.

Do either of your colleagues have anything that they wish to add?

Ms. **Rauth**. I do not want to take up your time.

I do want to say that, having traveled throughout the country about the last 3 years, meetings with teachers in workshops, informal meetings and so forth, and hearing their remarks, I want to point out that the questions they raise are not primarily the teacher rights issues. They are concerned with what is happening in terms of the quality of education of the children they are working with in their classrooms. They feel that it has been very definitely diminished; they feel a terrible mistake has been made, and they are waiting for some direction, for someone to find out what is really going on in their schools. Our concern has been that it is very difficult that the message of reality and how something that intent is very positive, is actually having a negative effect in hundreds of thousands of cases around the country. And something has to be done, or you have generations of children who have suffered in the name of their own civil rights, and we are very concerned.

Senator **Stafford**. Thank you very much. Thank you all very much.

The next witness is Dr. Joseph Noshpitz, professor of psychiatry. George Washington School of Medicine, and a staff psychiatrist at Children's Hospital, Washington, who is representing the American Academy of Child Psychiatry and the American Psychiatric Association.

Doctor, welcome to the Subcommittee on the Handicapped. We appreciate your being here.

We would ask you also, if you might, to summarize your statement and we will place the entire statement in the record. I can assure you that other members of the subcommittee will read the record who are not able to be here at this point.

Chairman Randolph is at the White House at the moment and that is the reason that he is unable to be here with us until later in the morning. For some reason or another, he seems to think that the President, when he summons him, has precedence over his colleagues here in the Congress.

STATEMENT OF JOSEPH D. NOSHPITZ, M.D., PROFESSOR OF PSYCHIATRY, GEORGE WASHINGTON SCHOOL OF MEDICINE; STAFF PSYCHIATRIST, CHILDREN'S HOSPITAL, WASHINGTON, D.C., REPRESENTING THE AMERICAN ACADEMY OF CHILD PSYCHIATRY AND THE AMERICAN PSYCHIATRIC ASSOCIATION

Dr. **Noshpitz**. Thank you very much, Senator Stafford. I would like to speak very briefly about the——

Senator **Stafford**. Can you speak up just a little bit louder, bring the mike closer.

Dr. **Noshpitz**. How is that?

Senator **Stafford**. That is more than adequate.

Dr. **Noshpitz**. I will speak very briefly.

Most of the comments, of course, are in the written record, but I did want to set a bit of context to my remarks by reviewing an aspect of our culture that involves our address to the problems of children.

If we go back to the beginning of the century, the juvenile court was established in the first decade with the intention of caring totally for children in need and using all the power and the majesty of the law to pull in services and require that proper health care be given to the children who needed it. And it has worked at it for all these many decades without signal success. In the twenties and in the thirties, the child guidance clinic appeared on the scene and it, too, tried to take over the task of coordinating services and bringing to each child in distress and to each family in need everything that was essential for it. The clinic achieved a kind of quasi-success but surely did not accomplish anything like what it had hoped to do.

More recently, there was the Joint Commission on the Mental Health of Children. I was a member of the Board of Directors, and I recall how hard we worked to try to develop some principles that the Government and the Nation could adopt that would help handle the problems of children. We came up with a principle of advocacy and I think there was even an Office of Advocacy within NIMH, which is now, I believe of sainted memory. Subsequently the community health center idea was then the repository of the hopes of all of us working with children, and again in that context, the work with children has been one of the classic—I would not say it is quite a failure, but it certainly is not a success.

Now, Public Law 94-142 is entering into this territory, not with precisely the same intention and yet not able to avoid some of the problems implicit in it. The difficulties emerge from the fact that a child and a family are a totality with an interwoven set of needs, and that every attempt to address a part of it, whether from the legal side or mental health side or the educational side or the welfare side, inevitably comes up against all the others as well as many that I have not mentioned. It is not unusual for a multiproblem family to have 15 or 16 agencies involved. When we face that, and we see that we are trying to now take on the matter of special education and have it do those things that will be supportive of its mission, we are immediately into this same universe with all its complexities and all its difficulties. What then to do? We would like to make a number of suggestions.

First, the matter of the interdisciplinary requirements can be strengthened in various ways. The importance of many agencies working together around each child or at least those agencies that are clearly involved, can be mandated in various ways at various levels in a way that is more specific than I believe the law now entails. So that is one realm.

Second, definitions. For example, the definition of related services. I am sure that the committee will hear again and again people explaining the difficulties that they are having with that issue, and part of it comes out of the fact that it is a complex area and the lines are not sharply drawn, and so all sorts of hopes and expectations and territorial safeguards and other issues creep in. As a result, the need for clarity, for some specificity and definition become especially important in this realm. I think the law will function best if its perimeter is better stated, more clearly organized, and then can be more effectively defended.

Finally, of course, the last issue is the one that I am sure you will hear about from everyone who comes and sits in these seats, the problem of funding. Clearly the various agencies in the past that have tried so hard to cope with this have not lacked in good will. They have not even lacked in theory but they have often–well, for example, the juvenile court with the youngsters that it has to handle has no place to send them; certainly no good place. Again and again its mission blocked. There are no good services and there will be no good services unless there is adequate funding for the services that are mandated.

So these are the things that we would like especially to stress.

Senator **STAFFORD**. We are very grateful to you, Doctor, for helping us with our problems in trying to make Public Law 94-142 as good as we can to the benefit of the handicapped children of this country. And, in your case, as in Mr. Shanker's, we do have some questions we would like to submit to you in writing, in view of the compressed time problem we have this morning, with the activities in the Senate. So we will do that and we will send you a few questions and ask that you respond to them. If that is agreeable.

Dr. **NOSHPITZ**. We would appreciate that and be glad to. And let me add one word.

This is a world in which there are many good things but very few excellent things, and in the opinion of the two organizations that I represent with all its problems, this is an excellent law.

[The prepared statement of Dr. Noshpitz and questions and answers follow:]

American Psychiatric Association
1700 Eighteenth Street, N.W., Washington, D.C. 20009 · Telephone: (202) 797-4900

SUMMARY OF PRINCIPAL POINTS

OF

STATEMENT

BEFORE THE

SENATE SUBCOMMITTEE ON THE HANDICAPPED

July 31, 1980

by

Joseph D. Noshpitz, M.D.

1. Commendation to Subcommittee and the professional staff for continued dedication and concern about implementation of P.L. 94-142.

2. Despite honorable intentions, problems have arisen with implementation of the law at the state and local levels.

3. Mental and emotional needs of handicapped children identified under the Act are not being met.

4. Confusion with respect to psychiatric treatment as "related services" as defined under P.L. 94-142.

5. That related services by personnel specified to furnish educational and psychological counseling to handicapped children be a required provision of P.L. 94-142.

6. Interagency agreements between state educational and mental health agencies be reached, which shall determine and specify both administrative and reimbursement systems to provide continuing mental health services outside the educational system to children who need them but whose parents are not able to pay for them in whole or part.

7. That each State P.L. 94-142 advisory committee be required to include a qualified child mental health professional.

8. There are serious problems about protecting the confidentiality of sensitive, private information.

9. There is a need to train professionals in the medical and mental health disciplines for service in cooperation with school personnel under P.L. 94-142.

10. There is a need to train school personnel to work with physically and emotionally handicapped children.

American Psychiatric Association
1700 Eighteenth Street, N.W., Washington, D.C. 20009 • Telephone: (202) 797-4900

STATEMENT

of the

AMERICAN PSYCHIATRIC ASSOCIATION

and the

AMERICAN ACADEMY OF CHILD PSYCHIATRY

on

OVERSIGHT OF P.L. 94-142

presented by

Joseph D. Noshpitz, M.D.

before the

Subcommittee on the Handicapped

Committee on Labor and Human Resources

United States Senate

July 31, 1980

Mr. Chairman and members of the Subcommittee, my name is Joseph Noshpitz, M.D. of Washington. I am a staff psychiatrist at Children's Hospital in Washington, Psychiatric Director of the Florence Crittenton Home, Professor of Psychiatry at George Washingtion University School of Medicine and a past President of the American Academy of Child Psychiatry.

I am here today to present the joint testimony of the American Psychiatric Association and the American Academy of Child Psychiatry, two national associations which respectively represent more than 25,000 psychiatrists the country over and the approximately 2,300 physicians who have received two additional years of advanced training in child psychiatry.

At the outset I would like to commend the Chairman, the members of the Subcommittee and the professional staff for their continued dedication to and concern about the implementation of P.L. 94-142, evidenced by the thoughtful, indepth oversight hearing record. I welcome the opportunity to offer our collective comments and reactions.

We consider P.L. 94-142 landmark legislation, of extreme importance to the community of handicapped children and their families -- a subgroup of our population which often has been either forgotten or discriminated against, both officially and unofficially. In this law, we have for the first time, a federal mandate to provide services to children, regardless of handicap -- to establish such services as a right, to be guaranteed by the law, with appropriate safeguards as to due process. This is truly a breakthrough of far-reaching social significance.

These remarks are made from the perspective of our active participation, together with colleagues in many other disciplines in providing services to handicapped children and their families. While our particular expertise lies in treating the emotionally disturbed and the mentally retarded and learning disabled, we are also concerned about the social and psychological ramifications of the other handicapping conditions involving speech, general health impairment, orthopedic handicaps, multi-handicaps, and disabilities involving the critical senses of vision and hearing. As medical clinicians working in the community, we have contact with many such afflicted children, and provide a variety of services to them and their families. Many general and child psychiatrists also work directly with school staffs, especially in special education, being involved with initial diagnostic assessment, consultation to school personnel, in-service training, staff development, and a variety of other functions. Consequently, we urge that this statement be viewed as coming from a group of professional colleagues who share the commitment to the care of handicapped children and their families with those in education and special education, our medical colleagues (particularly those in pediatrics, neurology, orthopedics, ophthalmology and otolargyngology), and the great variety of other non-medical disciplines, whether or not specifically mentioned in 94-142.

P.L. 94-142 is one of the most important pieces of legislation ever enacted in the field of children's services. It seeks to ensure both forcefully and undeniably the provision of services for handicapped children. We are particularly pleased with the importance placed on early diagnosis and intervention, both important tenets of good physical and mental health practice.

However, despite its honorable intent, many problems have arisen with implementation of the law at state and local levels. These problems have been accompanied by high levels of confusion, frustration and hostility among otherwise well-meaning and dedicated people. Unintended as they may have been, the conflicts and antagonisms which have been uncovered must be faced before solutions can be found. Allow me to list a few of the most important of these problems. Realizing that you have heard about some of these from other groups, we will be brief and not all-inclusive.

Misinterpretations of the law by educators, special educators, school boards, parents, and others have led to grossly exaggerated expectations from 94-142. Consequently, the law has appeared to promise a great deal more than it can possibly deliver. Many school administrators worry about whether the alleged "open-ended" nature of the commitment to the provision of services to the handicapped will result in the bankruptcy of the entire educational system at both state and local levels. It would be accurate to say that 94-142 has at least strained the financial and emotional resources of schools to new limits. In addition, there has been much concern about the number of forms to be filled out and the bureaucratic tangle necessitated by compliance to federal, state and local guidelines, which often change, and sometimes contradict one another. Teachers complain that much of the time which used to be spent with children is now used to do paperwork.

Implementation has varied widely among the states, and from one locality to another. Ancedotally, one hears that affluent families and communities have taken advantage of the law to obtain increased services, while poorer families and communities have benefitted relatively less from 94-142. In addition, states and localities which had a strong commitment to special education prior to 94-142 have expressed resentment about the rigidity of the federal statute and the administrative difficulties it has presented.

It is important to note that some school districts actually have violated the spirit of the law by purposefully under-identifying or mislabelling the child with a handicap. This is done presumably so that they will not be forced to provide services that they do not now have. Often, school personnel are instructed to make no recommendations to parents for outside professional help (even when it is desparately needed) for fear that schools will have to pay for those services.

As a result, many handicapped children in need of mental health services, including psychotherapy, are not presently receiving them.

Moreover, it must also be acknowledged that in many districts receiving 94-142 funds, psychiatrists who are trained in both the physical and mental aspects of development are not being properly utilized to participate in recommending appropriate treatments to meet the mental and emotional needs of handicapped children. It is ironic that the law appears to pay for mental health services delivered by every mental health professional except those most trained to provide them. The irony continues when we realize that psychiatrists, because of the comprehensive nature of their training, often provide the most cost effective services available; they represent the only mental health profession able not only to render psychiatric treatment per se but also to perform the necessary antecedent differential diagnosis.

For reasons that are very complex, this well-meaning law has often been a paradox in its implementation. A bill so clearly espousing the goals of child advocacy has brought with it so much anxiety, confusion, defensiveness, and suspicion that it virtually promotes an adversarial relationship between the very people it wants to bring together in cooperative interaction for the ultimate benefit of the child. We wonder if something may be lost when "voluntary" efforts give way to mandated ones -- resulting ultimately in emphasis on quantity rather than quality, on appearances rather than realities, on fulfilling bureaucratic red tape rather than providing direct service to children.

Problems of handicapped children do not lend themselves to easy solutions or remedies. Even the simplest handicap can be of complex etiology, involving biological, social and psychological interactions which defy easy assessment and diagnosis, and which call for complicated programs of interventions requiring many disparate resources. For example, some children who demonstrate problems with academic achievement and behavior in school do so because of chaotic family experiences and difficulties arising out of poverty, unemployment, drug abuse, and other factors in their neighborhood and community, which impinge upon their lives. An IEP, which focuses exclusively on the three R's and which does not take into account complex etiology, and difficult environmental circumstances, will frequently be too simplistic and not relevant.

However difficult it may be, what must be accomplished is to develop and implement an IEP for the whole child and for the environment around him. It is ludicrous to presume that special educators can take on these burdens alone. Input and commitment from medical and other professional and community resources is essential.

The challenge of 94-142 is for all of the child-serving professions to consider this an opportunity to redesign the service delivery system for children with appropriate concern for the sharing of responsibility, authority, and funding, and to make integration, collaboration, and cooperation a governing principle.

It has been apparent to many of us that the various child-serving agencies on the state and local level (e.g., mental health departments, departments of education, departments of children and family services, welfare departments, and departments of correction, to name just a few) often are at war with each other. Burdened with too much to do and too few resources with which to do it, they are driven to frantic efforts to limit their own liability and responsibility for handicapped children. In these days of high tax burdens, intensive surveillance, and probing fiscal accountability, albeit lamentable it is altogether understandable that state agencies might place higher priority on balancing their books than on providing an integrated network of human services for children.

Unfortunately, the intention of the law with respect to psychiatric treatment within the context of "related services", as the term is defined in P.L. 94-142, is unclear. When the subject of related services was considered in the Senate Bill (S. 6), the Senate Committee Report (94-168), the House Bill (H.R. 7217), the House Report (94-332), by the House-Senate Conference and in the Joint Explanatory Statement of the Conference Committee, it was--to quote one of the staff architects of the legislation, Dr. Martin LaVor, in a recent article--"not the focus of extensive discussions". After citing every House and Senate reference to the term "related services", which we have reviewed carefully, Dr. LaVor concluded:

> When S. 6 and H.R. 7217 were considered by the full House and the full Senate there was virtually no discussion, reference or explanation that would further clarify legislative intent for the term "related services".

We concur. Thus, it is not clear whether the law intended for psychiatric treatment to be mandated and paid for out of school funds. As an example, the very point of whether "psychotherapy" was a "psychological service", a "related service" which schools must provide in connection with a free appropriate education, has already been litigated in Montana (In the Matter of the "A" Family, 602 P. 2d 157 Mont. Sup. Ct. 1979). The court concluded that "psychotherapy" was a "psychological service" under the Federal regulations' enumeration of "related services" which a school district providing education for a handicapped child must provide. Since a Montana regulation exists which provides for submission to Federal regulations when there is a conflict, the State regulations excluding psychotherapy from those services which a school district must provide were overridden by the Federal regulations.

We agree with the Montana Supreme Court's statement, that "In large measure, this issue arises out of confusing if not conflicting Federal and state statutes relating to special education." We believe that additional guidance needs to be given to the Office of Special Education and Rehabilitation Services than is provided in the legislative history of P.L. 94-142.

The provisions in the law limit the payment for medical treatment to diagnostic and evaluation procedures, and at the same time authorize payment for psychological services (under "related services"). This fails to acknowledge the reality of the complex nature of the treatment modalities provided by psychiatrists. These include a variety of psychotherapies which are presumably fundable as psychological services, but because they are provided by psychiatric physicians, they can also be classified as medical treatments, and would thus not be paid for under the Act.

There must be clarification of this tormented issue so that litigation will cease and the special educational and medical needs of identified handicapped individuals can be addressed with the necessary resources, be they educational or otherwise.

The APA and AACP, along with ten other consumer, provider and professional organizations, endorsed the Position Paper Supplement, dated March 21, 1980, of the National Consortium for Child Mental Health Services on P.L. 94-142 which acknowledged continuing problems with the "major gaps between diagnostic services and the actual delivery of an appropriate continuum of mental health services to individual children and adolescents." The Consortium endorsed the utilization of related services and recommended the following:

(1) That related services by personnel specified to furnish educational and psychological counseling to handicapped children be a required provision of P.L. 94-142. These services should be a part of the support system in the remediation and amelioration of handicapping conditions of emotionally disturbed children.

(2) That interagency agreements between state educational and mental health agencies be reached, which shall determine and specify both administrative and reimbursement systems to provide continuing mental health services outside the educational system to children who need them but whose parents are not able to pay for them in whole or in part. While educational systems should not be obliged to pay first dollar for continuing psychotherapy services (after diagnosis and evaluation), children and adolescents shall be assured needed psychotherapy services under the interagency agreements funded through any and all existing sources. Such available sources of funding would include Medicaid, Private Health Insurance, Community Mental Health Centers, and funding by other State agencies such as Mental Health and Child Welfare. P.L. 94-142 states that services hecessary for utilization of special education shall be at no cost to the parents. Since some continuing psychotherapy services may lie outside P.L. 94-142, parents are not automatically or entirely shielded from costs for them. Together with local and State School Districts, parents should be able to participate as a last dollar resource in the provision of such services.

(3) That each State P.L. 94-142 advisory committee be required to include a qualified child mental health professional. This resource professional should identify the mechanisms to provide for the mental health needs of children, through local mental health centers, other agencies, and private providers; thus assuring that the Individual Education Plan not ignore or omit the related mental health needs of the child in order to avoid or minimize expense.

In addition to these recommendations, the APA and AACP recognize (1) that physicians need to be included in diagnostic and intervention roles as indicated by the child's physical and/or mental condition; and (2) that parents need to be involved with their children in a variety of intervention processes in order for them to learn to manage and help their children live at home. There must be a sustained collaboration between parents and professionals for handicapped children to make real progress in special education programs.

Another major area of concern is that of funding. We realize that appropriations are not within this Subcommittee's jurisdiction and that you, Mr. Chairman, have been a leading advocate for adequate services. However, we believe, concomitant with the need for clarification of "related services" is the necessity to have Congress provide adequate funding for special education and related services under P.L. 94-142, which this Subcommittee has so carefully designed. As you know, Congress authorized paying for special education and related services under P.L. 94-142 at the rate of five percent of State costs in 1978 and increasing to 40 percent of State costs by 1982. Unfortunately, Congress has not appropriated the fully-authorized amount. For example, for F.Y. 1980, only 12 percent, instead of the 20 percent which could be made available, was appropriated. In drafting this bill, your Subcommittee recognized that considerable additional expenditures would be necessary to comply with its provisions. Ultimately, this will be cost effective both in economic and human terms. We are fully cognizant of fiscal constraints but we would hope that full funding of P.L. 94-142 will be forthcoming to ameliorate the shortfall in funding for needed special education and related services.

We also wish to point out that handicapped children who cannot be educated in the classroom often require placement in residential facilities for the severely mentally retarded and severely emotionally disturbed. To make such units function effectively requires dedicated staff, with considerable experience and expertise. However, we are concerned that the major criterion in the choice of facility may be cost, not quality of education or treatment. Because of this, we are concerned that some excellent private facilities which have been providing services for many years may be forced to close. There is grim experience to suggest that they would be replaced by less adequate facilities. Furthermore, non-placement or inadequate placement of these children imposes unwarranted burdens on untrained personnel, causing staff burn-out, an ever present and serious problem.

There are also a number of serious problems with confidentiality under the law. Because of the openness of the record, errors occur on both ends of the confidentiality continuum, i.e., either too much or too little information appears in the record. The problem can be compounded if the IEP is not developed with involvement of fully-qualified medical and child development experts. Most often, in the effort to avoid the communication of any sensitive, private information, and the problems which can arise therefrom, important data on the family and the child are not included. In terms of educational planning, the open record can thus become a relatively useless document.

Professionals working for the school are sometimes under pressure to come up with IEPs based on programs that are already available -- but which might be ideally suited to the needs of the child. (Obviously, no school system has an infinite array of programs, classrooms, and faculty). At the same time, outside professionals are encouraged to take an advocacy position on behalf of the child and/or his or her family, which sometimes result in conflict between the school, on the one hand, and the outside professional and the family, on the other. This will often become manifest in implementation of the due process portion of the law. We quite agree with those who prefer to see resolution of the problems through less formal means than hearings or court proceedings. Amicable resolution of conflict is superior to the rancor and anxiety of formal adversarial proceedings.

There is a distinct need to train school personnel to work with handicapped children. This could be accomplished through cooperation and consultation with medical and mental health professionals. Thus, there are ongoing needs to train such professionals in how to work cooperatively with school personnel under 94-142. Our organizations believe that considerable, additional discussions are necessary with OSERS to explore a variety of such inputs for our own membership as well as for medical students and resident physicians in various fields. Conversely, there is need to train school personnel to work cooperatively with medical and mental health team members.

Having presented major concerns with the content and specifics of this law, we wish to reiterate that it does provide a major and significant framework and a bold articulation of public policy and priorities.

We particularly would like to vigorously endorse those provisions of the Act that provide for early childhood education. We believe that this is a prime site for preventive intervention and that whatever monies are invested at this point in development will be repaid many fold by improved function and diminished dependency in later years.

The American Psychiatric Association and the American Academy of Child Psychiatry applaud the intent of P.L. 94-142 and welcome the opportunity of working with you and the staff and suggesting legislative amendments in conformity with my presentation. We hope thus to strengthen and improve this landmark legislation and to work out the substantive content problems of concern.

Thank you for the opportunity to speak to you this morning and I will be available to answer any questions you may have.

Response of Dr. Noshpitz to Questions Asked by Senator Randolph

1. In your opinion, what mental and emotional needs of handicapped children are not being met?

Because P.L. 94-142 is implemented in local systems, it is difficult to generalize about unmet needs. We believe the following points should be used as a guide to assess each local system's capacity to meet these unmet mental and emotional needs.

a. We believe that there currently is an insufficient degree of mental health consultation to inpatient and outpatient pediatric services, special educators, teachers, recreational services, sheltered workshops, vocational programs and other rehabilitation services.

b. There is not adequate psychiatric and other mental health diagnosis, evaluation, assessment, and screening.

c. There currently are significantly unmet mental health intervention needs for various therapies (e.g. individual, group, family milieu, psychopharmacological). In addition, there is a lack of adequate parental guidance and counseling.

The above should be included as part of a range of services. It is financially unwise and therapeutically unsound to allow a school system to select only one or two modalities of treatment, thus excluding other appropriate treatments and causing some children to receive no or inappropriate care.

Therefore, participation in this program should be conditional on provision of a full array of services ranging from early intervention to hospitalization.

2. Would you please describe the extent to which medical and other professionals should have input in the IEP process?

It should be required that there be medical input with each school in the development of the IEP, which the APA/AACP believes must include psychiatric and pediatric consultation. Any screening of children for mental and physical problems that may influence their schoolwork or school adjustment should be formulated into a statement of relevant findings and recommendations.

In addition, each state plan should include several items not previously mandated: a) that there be members of both Health and Mental Health professionals on the state and local advisory committees so that they have their input into the state and local plans and b) that each state plan specify that there be written inter-agency agreements between the state Departments of Education, Health and Mental Health in terms of the cooperative responsibility for the health and mental health care of children, and that this requirement be conditional to the receipt of education funds. This is particularly important since at the federal level there are now separate departments of education and health and

and human services. This charge would prevent various school districts from refusing to consider the therapeutic needs of their children in special education for fear that they may be stuck with the treatment programs which they cannot afford or which will reduce their capacity for providing special education programs to children in their charge. The concept of shared responsibility for these children must be emphasized over and over again.

3. Please elaborate on the problems regarding the protection of confidentiality of sensitive, private information?

Since the IEP is an essentially public document, any confidential details should not be included in the medical and mental health report. Only pertinent findings and recommendations for specific action should be attached to the IEP. These might be such details as might be offered to teachers when a child mental health professional consults with the school.

4. You raise a very important issue with reference to "related services." In your judgment, where should the line be drawn between the responsibilities of the public schools and the State mental health programs with reference to providing mental health services to P.L. 94-142 children?

It is difficult to define the cutting edge because of the varieties of capabilities of the educational and mental health systems within each jurisdiction. The answer to the dilemma must be to require working interagency agreements as a condition to the receipt of federal funds. This requirement is a sine qua non to effecting appropriate treatment for each child covered by the mandate of P.L. 94-142. These interagency agreements could provide that direct treatment services, including psychotherapy, be paid for through such third party payors or parental funds as would ordinarily cover this type of professional expense. The schools should be concerned with and pay for mental health assessments, evaluations and diagnoses that arise with school related problems. The schools should also be required to purchase mental health consultation for school staff working with handicapped children. Finally, where necessary, the school system should pay for residential care when such is indicated. Reimbursement for such residential placement should be at a level which recognizes the cost of providing such needed services.

Senator **Stafford**. Thank you, sir. We know it is far from perfect.

The next witness will be Dr. Sharon Robinson, who is director of instruction and professional development in Washington, representing the National Education Association.

Doctor, welcome to our subcommittee hearings. Again if you could summarize, and we will place your entire statement in the record.

STATEMENT OF DR. SHARON ROBINSON, DIRECTOR, NATIONAL EDUCATION ASSOCIATION'S PROGRAM FOR INSTRUCTION AND PROFESSIONAL DEVELOPMENT

Dr. **Robinson**. Thank you, Mr. Chairman.

In the interest of time, I will attempt to summarize.

Senator **Stafford**. Could you bring the mike up just a little so that we can hear, especially those in the back of the room.

Dr. **Robinson**. I am Sharon Robinson, director of the National Education Association's program for instruction and professional development. The 1.8 million member NEA particularly values the opportunity to share with you urgent concerns of the Nation's teachers about one of the most important Federal educational initiatives ever enacted, the Education for All Handicapped Children Act.

In an effort to summarize, I would just say that this initiative imposes upon our members at a classroom level in a most dramatic way. Perhaps no initiative other than desegregation is felt so keenly at the level of the classroom teacher. And our members have been very open in sharing concerns with us.

I could capsulize those concerns by stressing that they are these: training, adequate training. It is a matter of morale, as well as a matter of professional integrity. Our members are concerned about being able to provide adequate instructional services to all students who come into their classrooms. They recognize it as an imposition as well as a threat to the children that they attempt to serve when they have students for which they recognize their training is inadequate.

The issue of class size is also an instructional matter that has not been dealt with adequately at the local level. We have been trying to gauge the impact on class size of the introduction of one handicapped child to the classroom. The best information that we can get from our members, lacking hard empirical research in this area, suggests that there should be a reduction of five students for every handicapped child mainstreamed into the regular classroom.

Another issue of particular concern to us is the involvement of teachers in the placement process. While the law is being implemented in some places through which perfunctory involvement of teachers is allowed, this involvement is not universally mandated by strict requirements that all are held to observe.

The issue of adequate resources comes into play when our teachers are required to fill the need and to seek out support services for children that come into their classrooms; the identification of those services is near impossible. The entire system needs to be tuned up so that the support resources for supplying the needs of handicapped children are readily identifiable and available.

Compliance and enforcement procedures are not always forthcoming and the whole process is not easy. The bureaucratic structure almost defies adequate attention given to any particular compliance problem relative to the intent of this law. And, finally, as I am sure you will hear often during the course of these hearings, we must bring to your attention the issue of funding. All these concerns work together in what I call an intent to fully implement this initiative. While our members are in sympathy with the notion of 94-142, many are even committed advocates for the whole notion of mainstreaming.

We do have to recognize and call to your attention the negative impact of incomplete implementation of any initiative or any innovation. It is that kind of systematic observation and analysis that we would encourage on the part of the committee, as you seek to rectify some of the deficiencies in the initiative.

Thank you.

Senator STAFFORD. Thank you very much, Doctor. We really appreciate your being here and I can assure you that your testimony will get attention from the entire subcommittee and eventually the full committee.

In your case, if it is agreeable, we would like to submit some questions in writing for response in writing also.

We thank you for your presence here very much.

[The prepared statement of Dr. Robinson along with questions and answers follow:]

nea
NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 833-4000
WILLARD H. McGUIRE, President
BERNIE FREITAG, Vice-President
JOHN T. McGARIGAL, Secretary-Treasurer
TERRY HERNDON, Executive Director

STATEMENT

OF THE

NATIONAL EDUCATION ASSOCIATION

ON

THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

PRESENTED BY

SHARON ROBINSON

NEA DIRECTOR OF INSTRUCTION AND PROFESSIONAL DEVELOPMENT

JULY 31, 1980

Mr. Chairman and members of the Subcommittee, I am Sharon Robinson, director of the National Education Association's program for Instruction and Professional Development. The 1.8 million-member NEA particularly values the opportunity to share with you urgent concerns of the nation's teachers about one of the most important federal educational initiatives ever enacted, the Education for All Handicapped Children Act. These concerns are especially critical as the date for full implementation of that law -- September 1, 1980 -- is upon us.

That date is surely circled on the calendars of many of our members since, in the final analysis, it is the teachers who must strive to fulfill the mandate of the law -- to deliver a free appropriate public education to all handicapped children aged three through twenty-one. The teachers -- not Congress or state education agencies or school boards or panels or commissions -- must meet this enormous challenge despite too little involvement in the process, too little training in educating these children, too little money, and too few resources.

The simple fact is that the ideal of a free appropriate public education for all handicapped children will not be a reality on September 1, nor perhaps for some time to come unless changes are made in the funding, regulation, administration, and enforcement of the law.

Let me stress, however, that we are not interested in trying to lay blame on any agency or individuals. Certainly, teachers are dedicated to the goals of PL 94-142; and we believe that the vast majority of all those involved with its implementation are equally supportive of those goals. It is just that all of us are a bit staggered by the charge to provide the best education possible for eight million children with special needs, indeed to meet the needs of all children, when staff, resources, and support are so desperately low.

We want to underline that the Education Department's Office of Special Education (and its predecessor agency) has been concerned, cooperative, and responsive in many ways. Policy papers from this office have, for example, supported some teacher involvement in development of each state's Comprehensive System of Personnel Development (teacher training plan) and in the process of developing the Individualized Education Programs (IEP). While required by the law, enforcement of this teacher involvement has not occurred to any great degree.

We are all making strong efforts. But we must do more if the reality is to resemble the ideal. Toward this goal, I would like to share teacher perceptions of a few of the central issues we have identified as most critical to improved implementation of the law.

1. Adequate training for teachers. The inservice training, mandated by the law, has been provided for very few educational personnel who bear responsibility for providing services to the handicapped students. Even where some training is offered, teachers say it is not really relevant to what they need to meet the day-to-day challenges of educating handicapped children, nor are incentives for participating -- also discussed in the law -- being offered. The central problems are that most of those who need training are not getting it, and that teachers, who know most about what they need, are not being involved in development of training programs.

To meet these basic deficiencies, a number of steps must be taken. The Office of Special Education should monitor and enforce the law's mandates for development by states of quality programs for personnel training and retraining. The states should place both regular and special education teachers on their personnel development panels to help devise recommendations for realistic programs. Teachers should have a prominent role at the local level in helping to determine the content of inservice programs, and the full range of incentives in the law, such as released time, should be made available to teachers so that they can fully participate.

In short, no teacher should be assigned a handicapped student until that teacher is trained to understand and meet the student's needs. People who have not been in the classroom can have no idea of the impact on a teacher's morale of feeling, as one put it, "woefully unprepared" but being unable to do anything about it.

Certainly, a step in the right direction is the proposed Senate amendment to the Higher Education Act to set up a new fellowship program for elementary and secondary teachers in areas where there is a shortage of personnel trained to teach the handicapped. As far as we're concerned, there is a shortage of such teachers everywhere!

2. Class size. Teachers would like to individualize instruction for all children, and they make a valiant effort to do so. Even to meet that goal for children with a "normal" range of needs, current class sizes are unmanageable. When a child needs help or encouragement, he or she needs it now, not tomorrow or next week. The loss to a child's learning or self-esteem because a teacher could not give the needed attention may never be recouped. The frightening thing is that the teacher never knows for sure just how serious the eventual repercussions will be.

Educational researchers have now proved conclusively that reduced class size not only produces increased student achievement but also that smaller classes have a positive effect on classroom processes and environment, student attitudes and behavior, and teacher satisfaction. Teachers can use a greater range of instructional techniques and a greater variety of materials. Discipline problems decrease since students' frustrations are fewer, and teachers are better able to diagnose causes of misbehavior and deal with individuals before major problems occur. From verifiable gains in student achievement to better human interaction, the benefits of smaller classes have been documented. If smaller classes are this important for students in general, you can imagine how critical they are for handicapped children.

Teachers in the classroom don't have to imagine. They know from experience. NEA's 1980 National Teacher Opinion Poll showed that 81 percent of teachers believe that when a handicapped child is placed in a regular classroom for some or all of the time, class size should definitely be reduced. Reduction by five students for each handicapped student was the median recommendation of teachers polled. There are some class-size reduction plans already in effect in school districts which are based on a "weighted-count" formula for determining class size not by the numbers of students but by the level and type of their needs. These could provide a good starting point for development of a model by the Office of Special Education for use by local school districts.

3. Involvement of teachers in placement and planning. There is currently no recognition in the law of the right of the teacher, either regular classroom or special education, to call for the possible reassignment of an inappropriately placed handicapped child. This is true despite the fact that teachers are precisely the ones who most likely know best whether children's needs are being met in their current placement. Without provision for teacher input on this

critical decision, handicapped children will continue to drift aimlessly in the wrong classroom environment without the services they need -- to the detriment of themselves and other students.

Equally important is the participation of teachers in the initial decision-making about the child's Individualized Education Program (IEP). It is absolutely essential that the teacher who will have to carry out the goals set out in the IEP -- as well as the teacher who has had most exposure to the child previously -- be fully involved in the IEP process. Only when this occurs will there exist the maximum opportunity for adequate evaluation and instruction of each handicapped child. NEA members think that this involvement of the receiving teacher is so important that they have incorporated their support for it into NEA's continuing policy statement on education of the handicapped.

4. Adequate resources. The list of resources that teachers need and do not have would take up a sizable chunk of the fine print in the Congressional Record. They can be summarized as more people, more time, and more materials, equipment, and facilities.

The "people" include everybody from regular classroom teachers so that class size may be reduced, to more specialists to diagnose problems and prescribe solutions, to aides to do everything from preparing braille instructional materials to assisting with less physically mobile students. The "time" includes released time or compensatory time to participate in inservice training, work on IEP's, and work with other teachers or parents to provide needed services to handicapped students. Much of that precious time, by the way, is all too often taken up with intolerable amount of paperwork imposed by local and state agencies.

The "materials, equipment, and facilities" needed to serve the varied types of handicapped children are staggering. They include special instructional materials for those with any one of several learning disabilities; braille typewriters; amplification devices for the hearing impaired; and "crisis rooms" for the emotionally disturbed. And we're talking about school districts which already do not have enough books or classroom equipment.

5. Compliance/enforcement. A major difficulty with enforcing compliance is the lack of hard data on the extent to which local and state agencies are fulfilling the mandates of the law. This is an area in which OSE needs to make additional efforts. When we look at the magnitude of the task of monitoring, and the difficulty that even experienced agencies have had with enforcement, we cannot harshly criticize the Office of Special Education. The OSE staff is strong in educational theory and practice -- and we certainly need that expertise -- but they have little training or experience in monitoring and law enforcement skills. Agency staff need more training and need to work more closely with the Office for Civil Rights, which has staff with the necessary expertise.

Nevertheless, we have to be aware of the problems resulting from this lack of full enforcement. Handicapped students linger in the limbo land of waiting lists -- waiting to be evaluated, waiting to be placed, waiting to be served adequately. Even when handicapped children have ostensibly been identified, evaluated, and placed for services, too often they are misclassified, misplaced (literally as well as figuratively), and ill-served. This doesn't speak to those who have never even begun the process toward proper placement and services. Further, the handicapped child who is swiftly identified, properly evaluated, and rightfully placed is often faced with an inadequately prepared teacher.

The teacher also may be trying to deal with too many students of too many kinds, as well as not having the necessary resources and back-up personnel.

Unfortunately, OSE is, at this point, monitoring paper, not people. What good is the most responsive, efficient plan in the world if the plan is just that? What good is a plan that is never fully implemented due to lack of commitment or understanding by education agencies or to lack of resources for teachers?

Performance Administrative Reviews are cursory and draw little, if any, follow up. A disapproving shake of the head often constitutes the substance of enforcement demands made to state or local education agencies that fail to comply with either the letter or the spirit of the law. In some cases, OSE has simply not made clear what these agencies should be doing and how they should be going about it. We need, for example, policies on non-discriminatory evaluation procedures, criteria for placement of children in the least restrictive setting, guidelines on use or abuse of standardized tests, and enlightenment on the scope of education-related services required.

Further, OSE has not set out the most serious problems for first-and-foremost attention. Priorities have to be identified for both monitoring and enforcement. Priority areas should include: teacher inservice education and training; handicapped students denied any services; handicapped students still on waiting lists; institutionalized students still not being served; handicapped students remaining segregated; minority students being disproportionately misclassified; handicapped students being illegally suspended and expelled; handicapped students not receiving IEP's; and parents not being notified of their rights, or surrogate parents not being adequately identified.

We know that the Secretary of Education has charged a task force to look into many of these problems. We look forward with great interest to its recommendations and the Department's follow-up actions.

We have left the greatest problem until last because it underlies all the others. That problem is funding. Most school districts were in desperate financial straits before PL 94-142 was instituted; they are in worse shape now -- due to the worsening economic picture in the nation, the so-called "tax revolt," and the state and federal mandates for programs like PL 94-142 which do not carry with them the funds necessary for implementation.

The law authorizes funding at the level of 30 persent of the average per-pupil expenditure for the fiscal year ending September 30, 1981, going to 40 percent subsequently. We are looking at more like 12 percent in real funding. State and local governments simply cannot make up the difference.

For our part, the teachers of this nation are committed to make the Education for All Handicapped Children Act work. What is needed from the federal government is full funding, good administration, careful regulation, and thorough enforcement. Teachers are willing and dedicated partners in the effort to see that this unprecedented challenge is met; on their behalf, we ask that your commitment match theirs in reality as well as in ideals.

nea
NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D.C 20036 • (202) 833-4000
WILLARD H. McGUIRE, President
BERNIE FREITAG, Vice-President
JOHN T. McGARIGAL, Secretary-Treasurer
TERRY HERNDON, Executive Director

1980 AUG 14 AM 11: 38

August 12, 1980

The Honorable Jennings Randolph
Chairman, Subcommittee on the Handicapped
Room 4230 Dirksen Senate Office Building
Washington, D.C. 20510

8-14

Dear Senator Randolph:

The National Education Association welcomes the opportunity to supplement our earlier testimony on implementation of Public Law 94-142 as requested in your August 1 letter which contained two questions.

> Your question #1: "...you suggest that a handicapped student should not be assigned to a teacher until that teacher is trained to understand and meet the needs of the student. Suppose we have a small school district with limited resources, does NEA feel that the student should then receive no services or would it be more beneficial to place the student in the class and have the teacher receive training within a reasonable period of time?

The law is very clear. If a local school district is unwilling or unable to provide services, then it's the state's responsibility. If small districts cannot provide both teacher training and a free, appropriate education for their handicapped students, then Congress should move to increase the amount of funds directly to those districts or to the states so that area, regional, or statewide programs can be initiated. This again raises the fundamental problem of inadequate funding that I alluded to in my written testimony of July 31, 1980.

The requirement that teachers receive training prior to the placement of a handicapped student in their classrooms is of the highest priority for our members. A teacher who is not specifically trained is soon demoralized. Moreover, the absence of such training is an anathema to the goal of providing an appropriate education based upon the individual needs of the child. An alternative to prior training could be for the teacher to receive training concurrent with the placement of a handicapped child in his or her classroom. We wouldn't advocate such an approach other than as a last resort, lest such become the mode.

(continued)

Your question #2: "In a time when Federal agencies and school systems are faced with massive budget restraints, how does NEA suggest that reduced class size be accomplished?"

Special educators and school boards have long recognized that students with special needs require more teacher time and individualized instruction. Accordingly, class sizes for the handicapped have been smaller. However, with the advent of PL 94-142 and "mainstreaming," regular classroom teachers are being asked not only to provide specialized services without the benefit of special training but also to teach their regular load of 25 or more students. We have literally lost ground.

When teachers advocate reduced class size, they are often patronized by being told about available special services. However, these services--no matter how essential--do not resolve the problem of numbers. The critical problem of numbers is acutely exacerbated when handicapped children are placed in regular classrooms.

The public, and especially parents, want schools to function better and improve not only student achievement but also student attitudes and behavior. There are ways to improve. A most important way is to reduce class size so that teachers can use a variety of instructional techniques and give each student enough personal attention to recognize and deal with instructional and behavioral problems before they get out of hand. We know that it will cost money. But reduction of class size is the single change that we can make that has been shown by education researchers to bring such significant and gratifying results regardless of the type of student involved or subject being taught. Therefore, we believe that it is our responsibility as the organization representing teachers to point out the importance of reducing class size and help the public to understand that doing so will more than pay for itself in the preparation of more independent, productive citizens.

Teachers have for a long time known that class size is important to the fulfillment of their professional responsibility to educate our young people. However, only recently have the research studies begun to show the correlation between achievement and class size. A study by Gene Glass and others on class size concluded that "average pupil achievement increases as class size decreased. The typical achievement of pupils in instructional groups of 15 and fewer is several percentile ranks above that of pupils in classes of 25 and 30."

The following suggestions are offered as ways to reduce class size in the face of budgetary restrictions:

1. At a time of reduced enrollments, school districts should not cut back on the percentage of their support to public schools but rather use their funds to reduce class size.

2. Federal laws and policy statements should recognize that the effort required to achieve effective instruction is a significant factor in determining proper class size; particularly in mainstreamed classrooms. Such laws and policy statements should also include incentives toward reduced class size.

3. Concerned teachers, citizens, and legislators must join together to highlight and educate the public as to the importance of class size for providing a free, appropriate public education for all our children.

4. Congress should explore the issue of class size as it relates to the education of handicapped children by calling for regional or national hearings on the issue.

At this point, I will offer the following additional comments:

During the recent Oversight Hearing on the Education for All Handicapped Children Act, one witness suggested that the individualized educational program (IEP) for all disabled students is actually a "roadblock" to the implementation of the law. This view represents unfortunate insensitivity to the intent and import of the IEP.

The NEA strongly supports the concept of the IEP. The states and the local education agencies must insure adequate time to prepare the IEP, identify all required support services, and establish the full participation of appropriate role groups.

Rather than regard the IEP as a time-consuming "roadblock" to the implementation of PL 94-142, we regard it as the contract which represents the local and state commitment to the education of each handicapped child. Without such a statement, the parents of handicapped children would be involved with the classroom teacher only, thereby encouraging the perception that the classroom teacher is solely responsible for the educational needs of the child.

The IEP serves the valuable function of defining and fixing responsibility for delivery of the various services, including classroom instruction. It represents the contract binding all parties involved to the educational objectives of each handicapped child.

In conclusion, we hold that developing individualized education programs would benefit all children. This is rather the core of PL 94-142. Teachers desperately want to make the concept work. Accordingly, our basic plea is for the creation of conditions whereby teachers can succeed.

If I can provide further information, please contact me.

Sincerely,

Sharon Robinson

Sharon Robinson, Director
Instruction and Professional
Development

SR/ebl

Senator STAFFORD. We next have a panel, Dr. David Williams representing the American Academy of Pediatrics, from North Carolina, and Dr. Jean Ramage, executive manager of professional relations in San Diego, Calif., representing the National Association of School Psychologists.

On behalf of our subcommittee, I welcome you both here. I do not know which order of precedence you wish to go in so I will leave that for you to determine between yourselves.

Ladies first. We would ask you, as we have the others, to summarize if you would, and your full statements will be in the record. We will probably submit questions to you in writing.

STATEMENT OF JEAN RAMAGE, PH. D., EXECUTIVE MANAGER, PROFESSIONAL RELATIONS, NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS, AND DAVID R. WILLIAMS, M.D., THOMASVILLE, N.C., REPRESENTING THE AMERICAN ACADEMY OF PEDIATRICS, A PANEL

Dr. RAMAGE. Thank you, Senator Stafford. We appreciate being invited here because special education is an extremely important area. We are very glad that Public Law 94-142 oversight hearings continuing.

We are particularly grateful that the committee invited professional organizations. We have been frustrated in getting any information into the record and we thank you for that opportunity.

Senator STAFFORD. I think, Doctor, if you would, in your case, if you would move the mike away just a little bit. It might be easier for our guests to hear.

Dr. RAMAGE. I am Dr. Jean Ramage, executive manager of professional relations for the National Association of School Psychologists. With me today is Susan Beecher, a school psychologist from Sacramento, Calif.

My comments represent input from school psychologists who are employed in nearly every school district in the United States. My comments also reflect the contributions of professional colleagues in mental health, such as psychiatrists, psychologists, and other mental health specialists, and from professionals and related pupil services such as schools, social workers, school counselors, school nurses, school pathologists, and numerous other related services specialists. I am especially indebted to the Association for the Advancement of Psychology and the National Consortium of Child Mental Health Services and to the National Alliance of Pupil Services Organizations for their contributions in developing these recommendations on Public Law 94-142. The membership of these groups together with the National Association of School Psychologists reflect a substantial segment of the related services community.

STATUS OF IMPLEMENTATION

Public Law 94-142, the Education for All Handicapped Children Act, has had a dramatic effect on the delivery of special education and related services to children. The provisions of the act have brought about major changes in educational practice. This in turn affects all education. The educational system needs time to absorb the impact of these changes. Therefore, we recommend caution in considering major revision of Public Law 94-142 at this time.

Public Law 94-142 has not only increased available services, but it has given access to these services to a greater number of handicapped children. However, the potential impact has not been realized because of inadequate funding and the need to coordinate services in schools and in the community. State and local agencies are still in the process of clarifying policy regarding the delivery and funding of these services. These efforts reflect the need to encourage the development of collaborative agreements between education agencies and State and Federal agencies administering title XIX, title XX, Rehabilitation Services, SSI—title XVI—and title V.

CONTINUUM OF SERVICES

The least restrictive environment provision has forced closer attention to the continuum of services needed by handicapped children and youth. These services vary by the nature and severity of the handicap.

Children with special needs must be identified as early as possible. At present there is no incentive for the educational system to work with other systems, such as the medical system, for children age 0 to 3. Therefore, we recommend that this group be allowed to be in the child count in a State which chooses to serve these children.

For youth between the ages of 16 and 21. there is a need to link with other systems, especially Rehabilitative Services. This should be somewhat easier now that the Office of Special Education and Rehabilitative Services have been transferred to the Department of Education. Rehabilitative Services have served individuals with many handicapping conditions. However, they have not traditionally served the learning disabled individual. Therefore, we recommend that a coordinated effort in this area be made a high priority to assure the successful transition of children from school to productive adulthood.

Recognition of the continuum of services has increased the necessity for professionals with varied expertise to work together. Since many different service providers have not always worked closely together, there is a need for continued policy clarification and identification of cooperative efforts that are working effectively—that is, model programs. This is particularly pertinent to the provision of related services.

RELATED SERVICES

In the related services area there are some major problems. The following are some of the most important concerns and recommendations that are suggested by school psychologists and other related services personnel.

One, personnel: There is currently an inadequate number of trained personnel in and out of schools to implement fully the mandates of Public Law 94-142. There is a need for a comprehensive manpower study of related professionals, and provisions for further inservice and preservice training.

Two, supplanting of services: A related problem is what I call supplanting of services. This happens when personnel who used to provide services to all children find their roles restricted to the special education populations, thus eliminating the option of doing preventive work with high-risk children who often become the educational problems of tomorrow. Part of this problem is the lack of trained personnel, and the lack of funds to hire them.

Three, funding: The limited amount of funding has profoundly restricted the provision of related services, especially counseling and psychological services. Part of the problem has been the child count provisions, where funds are based on one count per child, and not on the number of services needed by the child. The danger is that the evaluation will focus on labeling the child. While this approach may satisfy the needs of the system, it does not necessarily address the needs of the child. In fact, this approach may increase the likelihood that the child will be subjected to the educational stigma that often accompanies such labeling.

Lack of clarity in fiscal matters has led to confusion between agencies. In some instances, services outside the school have been cut off because there was an assumption that the school would pick up costs. Sometimes needed services have not been entered in the child's IEP because of concern that schools would have to pay the total costs. What is recommended is that a variety of successful cooperative agreements be identified as models, and be made available to State and local education agencies.

Four, understanding of related services: Some concern has been raised about the interface of related services personnel and special education. Part of the issue is related to which agency has jurisdiction over the service. Part of the problem might be resolved if related services personnel were represented on the State and local advisory boards when the State and local plans are being developed.

One of the problems has been that less qualified people have been put into positions for which they have no expertise. This has been particularly problematic in the initial evaluation process, where the most qualified personnel are often not involved, but which is the point where their expertise is most needed.

SUMMARY

In summary, let me say that Public Law 94-142 mandates many important special education and related services for handicapped children. The educational system is still adjusting to the new requirements of the act.

The following recommendations are based on what we perceive as a need to support State and local efforts to adapt, and to make modifications in the act that will further enhance its responsiveness to the needs of handicapped children.

Reauthorize the act substantially as it is.

Work to insure that appropriated funds approach the level of authorization.

Enhance potential for success by allowing children aged 0 to 3 in the child count, and making it a priority to provide services to learning disabled individuals aged 16 to 21.

Provide inservice and preservice training for related services personnel. I would also agree with the needs for more service for the teachers and particularly the regular teachers.

The next recommendation is to continue policy clarification and the development of interagency agreements.

Collect information on the number of services delivered as well as the number of children served.

Again, thank you for the opportunity to testify and to convey our recommendations. We pledge to continue working toward the qoals set forth in Public Law 94-142. If we may be of assistance to the subcommittee on this or any other matter, please call upon us.

[The prepared statement of Dr. Ramage and responses to questions follow:]

NATIONAL
ASSOCIATION
OF
SCHOOL
PSYCHOLOGISTS

OFFICE OF THE EXECUTIVE MANAGER

Testimony of

Jean Ramage, Ph.D.

on behalf of

The National Association of School Psychologists

before the

Subcommittee on the Handicapped
Committee on Labor and Human Resources
on the subject of
The Education for All Handicapped Children Act
(P.L. 94-142)

United States Senate

July 31, 1980

EXECUTIVE MANAGERS

Convention
Sharon Petty
7047 Pebble Creek
West Bloomfield, Michigan 48033

Professional Relations
Jean Leppaluoto
11127 Via Temprano
San Diego, California 92124

Membership & Fiscal
Michael Chrin
2953 Silver Lake Blvd.
Cuyahoga Falls, Ohio 44224

Committee Services
Mary St. Cyr
10 Overland Drive
Stratford, Connecticut 06497

SUMMARY OF TESTIMONY ON
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (P.L. 94-142)

Public Law 94-142 mandates many important special education and related services for handicapped children. The educational system is still adjusting to the new requirements of the Act.

The following recommendations are based on what the National Association of School Psychologists perceives as a need to support State and local efforts to adapt, and to make modifications in the Act that will further enhance its responsiveness to the needs of handicapped children.

- Reauthorize the Act substantially as it is.
- Work to ensure that appropriated funds approach the level of authorization.
- Enhance potential for success by allowing children aged 0 to 3 in the child count, and making it a priority to provide services to learning disabled individuals aged 16 to 21.
- Provide inservice and preservice training for related services personnel.
- Continue policy clarification and the development of interagency agreements.
- Collect information on the number of services delivered as well as the number of children served.

Thank you for inviting the National Association of School Psychologists (NASP) to testify before the Subcommittee on the Handicapped of the Committee on Labor and Human Resources of the United States Senate. I am Dr. Jean Ramage, Executive Manager of Professional Relations for the Association. My comments represent input from school psychologists, who are employed in nearly every school district in the United States.

My comments also reflect the contributions of professional colleagues in mental health, such as psychiatrists, psychologists and other mental health specialists, and from professionals in related pupil services, such as school social workers, school counselors, school nurses, speech pathologists and numerous other "related services" specialists. I am especially indebted to the Association for the Advancement of Psychology, to the National Consortium of Child Mental Health Services and to the National Alliance of Pupil Services Organizations for their contributions in developing these recommendations on P.L. 94-142. The membership of these groups, together with NASP, reflect a substantial segment of the "related services" community.

STATUS OF IMPLEMENTATION

Public Law 94-142, the Education for All Handicapped Children Act, has had a dramatic effect on the delivery of special education and related services to children. The provisions of the Act have brought about major changes in educational practice. This in turn affects all education. The educational system needs time to absorb the impact of these changes. Therefore, we recommend caution in considering major revision of P.L. 94-142 at this time.

P.L. 94-142 has not only increased available services, but it has given access to these services to a greater number of handicapped children. However, the potential impact has not been realized because of inadequate funding and the need to coordinate services in schools and in the community. State and local agencies are still in the process of clarifying policy regarding the delivery and funding of these services. These efforts reflect the need to encourage the development of collaborative agreements between education agencies and State and Federal agencies administering Title XIX, Title XX, Rehabilitation Services, SSI (Title XVI), and Title V.

CONTINUUM OF SERVICES

The "least restrictive environment" provision has forced closer attention to the continuum of services needed by handicapped children and youth. These services vary by the nature and severity of the handicap.

Children with special needs must be identified as early as possible. At present there is no incentive for the educational system to work with other systems, such as the medical system, for children age 0 to 3. Therefore, we recommend that this group be allowed to be in the child count in a State which chooses to serve these children.

For youth between the ages of 16 and 21, there is a need to link with other systems, especially rehabilitative services. This should be somewhat easier now that the Office of Special Education and Rehabilitative Services has been transferred to the Department of Education. Rehabilitative services have served individuals with many handicapping conditions. However, they have not traditionally served the learning disabled individual. Therefore, we recommend that a coordinated effort in this area be made a high priority to assure the successful transition of children from school to productive adulthood.

Recognition of the continuum of services has increased the necessity for professionals with varied expertise to work together. Since many different service providers have not always worked closely together, there is a need for continued policy clarification and identification of cooperative efforts that are working effectively — that is, "model programs." This is particularly pertinent to the provision of related services.

RELATED SERVICES

In the related services area there are some major problems. The following are some of the most important concerns and recommendations that are suggested by school psychologists and other related services personnel.

1) Personnel. There is currently an inadequate number of trained personnel in and out of schools to implement fully the mandates of P.L. 94-142. There is a need for a comprehensive manpower study of related professionals, and provisions for further inservice and preservice training.

2) "Supplanting of Services". A related problem is what I call "supplanting of services". This happens when personnel who used to provide services to all children find their roles restricted to the special education population, thus eliminating the option of doing preventive work with high risk children who often become the educational problems of tomorrow. Part of this problem is the lack of trained personnel, and the lack of funds to hire them.

3) Funding. The limited amount of funding has profoundly restricted the provision of related services, especially counseling and psychological services. Part of the problem has been the child count provisions, where funds are based on one count per child, and not on the number of services needed by the child. The danger is that the evaluation will focus on labeling the child. While this approach may satisfy the needs of the system, it does not necessarily address the needs of the child. In fact, this approach may increase the

likelihood that the child will be subjected to the educational stigma that often accompanies such labeling.

Lack of clarity in fiscal matters has led to confusion between agencies. In some instances, services outside the school have been cut off because there was an assumption that the school would pick up costs. Sometimes needed services have not been entered in the child's IEP because of concern that schools would have to pay the total costs. What is recommended is that a variety of successful cooperative agreements be identified as models, and be made available to State and local education agencies.

4) Understanding of Related Services. Some concern has been raised about the interface of related services personnel and special education. Part of the issue is related to which agency has jurisdiction over the service. Part of the problem might be resolved if related services personnel were represented on the State and local advisory boards when the State and local plans are being developed.

One of the problems has been that less qualified people have been put into positions for which they have no expertise. This has been particularly problematic in the initial evaluation process, where the most qualified personnel are often not involved, but which is the point where their expertise is most needed.

SUMMARY

Public Law 94-142 mandates many important special education and related services for handicapped children. The educational system is still adjusting to the new requirements of the Act.

The following recommendations are based on what we perceive as a need to support State and local efforts to adapt, and to make modifications in the Act that will further enhance its responsiveness to the needs of handicapped children.

- Reauthorize the Act substantially as it is.
- Work to ensure that appropriated funds approach the level of authorization.
- Enhance potential for success by allowing children aged 0 to 3 in the child count, and making it a priority to provide services to learning disabled individuals aged 16 to 21.
- Provide inservice and preservice training for related services personnel.
- Continue policy clarification and the development of interagency agreements.
- Collect information on the number of services delivered as well as the number of children served.

Again, thank you for the opportunity to testify and to convey our recommendations. We pledge to continue working toward the goals set forth in P.L. 94-142. If we may be of assistance to the Subcommittee on this or any other matter, please call upon us.

NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS

Responses to Questions from Oversight Hearing
P.L. 94-142, July 31, 1980
Senate Subcommittee on the Handicapped

1. In your testimony, you mentioned the need for identification of cooperative efforts that are working effectively. Does your association know of any such "model programs"?

The testimony was suggesting that these "model programs" be identified through the research that is being done in the Office of Special Education. However, this information could be collected from the various collective organizations that are concerned about children with handicaps. I would be glad to assist in gathering information from the following organizations:

THE NATIONAL CONSORTIUM FOR CHILD MENTAL HEALTH SERVICES

The purpose of the Consortium is to bring together national organizations to work in concert to improve the delivery of services in child mental health. The Consortium has been concerned about the delivery of mental health services to handicapped children. Their position on P.L. 94-142 is enclosed. The Consortium is composed of the following professional organizations and consumer organizations:

- American Academy of Child Psychiatry
- American Academy of Pediatrics
- American Association of Children's Residential Centers
- American Association of Psychiatric Services for Children
- American Association on Mental Deficiency
- American Medical Association
- American Psychiatric Association
- Americay Psychological Association
- American Society for Adolescent Psychiatry
- Child Welfare League of American
- Mental Health Association
- National Association for Retarded Citizens
- National Association of School Psychologists
- National Association of State Mental Health Program Directors
- National Congress of Parents and Teachers
- National Council of Community Mental Health Centers
- Society of Professors of Child Psychiatry

NATIONAL ALLIANCE OF PUPIL SERVICES ORGANIZATIONS

The purpose of the Alliance (NAPSO) is to work towards the betterment of children and youth through pupil and related services. The Alliance is in the process of developing a position paper on related services. Those that attend Alliance meetings include the following:

- American Occupational Therapy Association
- American Personnel and Guidance Association
- American Physical Therapy Association
- American Speech-Language-Hearing Association
- American Psychological Association
- Association for the Advancement of Health Education
- Council for Exceptional Children
- International Association of Pupil Personnel Workers

National Association of Pupil Personnel Administrators
National Association of School Nurses
National Association of School Psychologists
National Association of Social Work Consultants on State
Departments of Education
National Association of Social Workers
National Association of State Consultants for School
Psychological Services.

Also, information on "model" programs can be gained from Robert Hennison-Warring of the Office of Special Education. He has been collecting this information.

2. You talked about the inadequate number of trained personnel needed to implement P.L. 94-142. Specifically, in which disciplines do you see the most inadequate numbers of personnel?

According to data from the Office of Education's report to Congress on the implementation of Public Law 94-142 (January 1979), the need is greatest in the area of psychology and speech pathology and audiology. Over 5,000 psychologists and 3,000 speech pathologists and audiologists were needed. The chart with this data is enclosed. This is the most recent data available from the Office of Special Education, although new data should be available shortly. (Call Paul Byrne, 245-2709) Please note that the data is old (1978-1979). However, through the contacts with other professionals through the Consortium and Alliance mentioned in number 1, the above shortage appears to still exist. There is also a need for school counselors and school social workers who understand the needs of the handicapped.

In the area of school psychology the shortage is apparent all over the United States. At the most recent national conference of the National Association of School Psychologists the question was raised at the meetings of "trainers" of school psychologists as to who had former students still looking for positions. Not a hand was raised and over one fourth of the programs were represented. This meeting was in April of 1980 and a number of educators ("trainers") indicated their students were already hired for the Fall of 1980, an unprecedented phenomena in recent times.

The training of school psychologists have never received substantial monies from federal funding. The majority of school psychologists have specialists training, that is at least 60 units of post-baccalaureate coursework and a year of internship. The National Instituteof Mental Health funds primarily doctoral training programs, so only a handful of school psychology programs have been funded; yet there are over 200 programs. Another small number of programs have been funded because of being located in special education departments. Most school psychology programs are not in special education departments, they are in educational psychology or psychology departments. However, all school psychologists are trained to work in schools applying learning and behavioral theories to the school setting.

Since psychologists are familiar with the assessment of most handicapping conditions, they are an invaluable asset in the decision making process regarding the individualised education program. Psychologists also have skills in developing psychological programs of counseling and parent advising, so desperately needed at this point in time by many of the children with handicaps. Also, school psychologists are the professionals with training most similar to rehabilitation counselors, so they can serve as the liaison to this important human service area. There is a joint school psychology and rehabilition program between James Madison University and Virginia Polytechnic Institute.

Therefore, it is recommended that pre-service and in-service monies be designated for training in the related services ares most needed; that is, school psychology and speech pathology and audiology.

3. You mention the need for linkage with rehabilitation services for disabled youth between the ages of 16 to 21. What is your perception of the role postsecondary education with reference to learning disabled children from 18 to 21?

Postsecondary education needs awareness of children and youth who have specific learning disabilities; that is, they have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, whoch may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to mathematical calculations. The effect at the postsecondary level is in two directions. The first is that in the educational process, the postsecondary institutions should be aware of the special needs of their students for alternative methods of presentation and opportunities to learn. The State of California has developed guidelines for the learning disabled college student. San Diego State University has instituted a program.

Postsecondary education also needs to plan programs to assist individuals not only to learn to read and write, but to prepare them in the skills to succeed in the world of work. Specific learning disabilities may need to be remedied because an individual may not know how to get along in the world of work, including time management, personal communication and following policies of the organization. Thus, there is a need for psychologists, rehabilitation counselors and vocational educators to work closely together.

The National Association of School Psychologists has endorsed the specialty of vocational school psychologists. With the integration of special education and rehabilitative services, there is going to be a greater need for such professionals.

FRANK RAFFERTY, M.D.
American Psychiatric Association
Chairman

WILLIAM BURDGANY, M.D.
National Association of State Mental Health Program Directors
Vice-Chairman

JEAN C. RAMAGE, PH.D.
National Association of School Psychologists
Secretary-Treasurer

SYDNEY KORET, PH.D.
American Association of Children's Residential Centers
Past Chairman

The National Consortium For Child Mental Health Services
[illegible] STREET, N.W., SUITE [illegible]
WASHINGTON, D.C. [illegible]
Area Code [illegible]

POSITION PAPER

of

THE NATIONAL CONSORTIUM FOR CHILD MENTAL HEALTH SERVICES

on

THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

Public Law 94-142

Adopted December 17, 1979 by the following member organizations:

- American Academy of Child Psychiatry
- American Association of Children's Residential Centers
- American Association of Psychiatric Services for Children
- American Association on Mental Deficiency
- American Psychiatric Association
- American Psychological Association
- American Society for Adolescent Psychiatry
- Child Welfare League of America
- Mental Health Association
- National Association of School Psychologists
- National Association of State Mental Health Program Directors
- National Congress of Parents and Teachers
- National Council of Community Mental Health Centers

The Education for All Handicapped Children Act, Public Law 94-142, has the following purposes:

1. To assure that all handicapped children have available to them a free appropriate public education which emphasizes special education and related services,
2. To assist states and localities in providing for the education of all handicapped children,
3. To assure that the rights of handicapped children and their parents or guardians are protected, and
4. To assess and assure the effectiveness of efforts to educate handicapped children.

The National Consortium for Child Mental Health Services supports the intent of The Education for All Handicapped Children Act, Public Law 94-142, to address the educational needs and rights of handicapped children and youth.

Funding

Congress authorized paying for special education and related services under P.L. 94-142 at the rate of 5% of state costs in 1978 and increasing to 40% of state costs by 1982. However, Congress has not appropriated the allowable amount. For fiscal year 1980 only 12% instead of 20% has been appropriated.

Since the mandates of the law require considerable additional expenses, The National Consortium for Child Mental Health Services supports the full funding of Public Law 94-142.

Personnel Development

Public Law 94-142 requires that every handicapped child receive the special education and related services identified in the individualized education program. A fundamental step in the provision of such services is the preparation of necessary personnel. In light of the least restrictive environment and related services provisions of the law, the personnel required to carry out the mandate far exceed the number of fully-qualified personnel available. For example, states indicated in their state plans that in 1979-1980 an additional 5,000 psychologists and 3,000 speech pathologists and audiologists would be needed by the schools.

The National Consortium for Child Mental Health Services supports the provision of fiscal and technical assistance to states, localities and institutions of higher education for the provision of sufficient quality special education and related services personnel.

Interagency Agreements

Legislative authority exists for a continuum of services for handicapped persons from birth to adulthood. Although in theory many services are available, they are frequently not received because of the maze a person must negotiate in order to receive the services. This is especially true for children and youth served under P.L. 94-142. Primary responsibility for services under this Act resides in educational agencies, thus proper coordination of resources involves interagency agreements.

The National Consortium for Child Mental Health Services supports the development and dissemination of interagency agreements at the local, state and federal levels that maximize the services to children with special needs.

Handicapped Children

The term "handicapped children" means those children determined to be mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services. A particularly bothersome problem has been that when children move from district to district they may or may not receive services depending on differing interpretations of the handicapping definitions.

The National Consortium for Child Mental Health Services supports the development of model programs that assist in equitable and coordinated services for handicapped children.

Related Services

Related services include those supportive services required to assist a handicapped child to benefit from special education. These services include audiology, counseling services, early identification, medical services, occupational therapy, parent counseling and training, physical therapy, psychological services, recreation, school health services, social work services, speech pathology and transportation. There is evidence that children are not receiving the full range of related services delineated under Public Law 94-142.

The National Consortium for Child Mental Health Services takes the position that there is a need for further policy clarification regarding the area of related services and urges the Bureau of Education for the Handicapped to make this a top priority area among the policy papers it is developing .

Secondly there is a need for personnel within the Bureau of Education for the Handicapped who are specialists in the areas of related services.

The National Consortium for Child Mental Health Services urges the Bureau of Education for the Handicapped to have specialists in the compliance, personnel training, and research branches that are specifically responsible for the coordination of related services.

One related service is specifically designated as being for "diagnostic or evaluation purposes" only, and that is the "medical services." This tends to create confusion regarding the provision of a continuum of mental health services needed by children so that they can profit from special education. The continuum ranges from counseling which is provided by school personnel to long term psychotherapy by specialists outside the school setting.

The National Consortium for Child Mental Health Services realizes the need to clarify funding of mental health services needed by handicapped children and has established a Task Force to help resolve this issue.

Evaluation Procedures

The regulations for P.L. 94-142 indicate that the evaluation is to be made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability. The child is to be assessed in all areas related to the suspected disability, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

The National Consortium for Child Mental Health Services supports comprehensive nonbiased assessment conducted by a multidisciplinary team when such assessment is conducted by personnel qualified in the area they are evaluating.

Individualized Education Program

The regulations for Public Law 94-142 indicate that in interpreting evaluation data and in making placement decisions, each public agency shall draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior; shall insure that information obtained from all these sources is documented and carefully considered; shall insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and shall insure that the placement decision is made in conformity with the least restrictive environment rules. If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child.

The National Consortium for Child Mental Health Services supports the development of the individualized education programs for each handicapped child based on the complete evaluation and the due process protections for parent participation.

Least Restrictive Environment

Public Law 94-142 mandates that to the maximum extent appropriate handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This is what is usually referred to as the "least restrictive environment."

The National Consortium for Child Mental Health Services supports the concept of "least restrictive environment" insofar as it leads to better services. The term should not be generalized to mean that all children are better off in the public schools. Some handicapped children at certain stages of their development function better in a structured setting such as twenty-four (24) hour care can provide.

Progress Toward a Free Appropriate Public Education

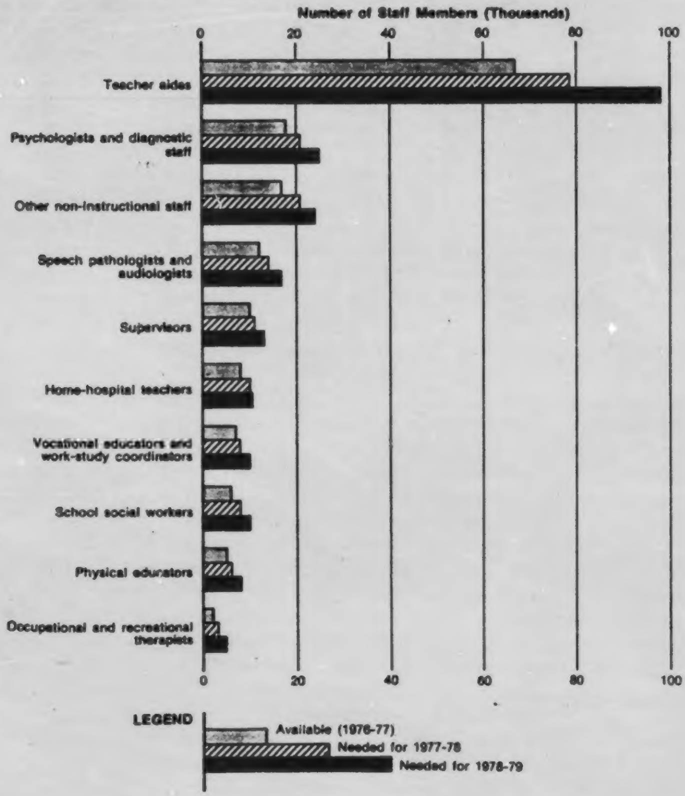
A Report to Congress on the Implementation of Public Law 94-142: The Education for All Handicapped Children Act

U.S. Department of Health, Education, and Welfare
Office of Education

January 1979

See Appendix D, Table D-3.5

Figure 3.5 School Staff Other Than Special Education Teachers Available and Needed[1]



[1] Some States combined categories. See Appendix D, Table D-3.5.

Senator **Stafford**. Thank you very much, Doctor. We appreciate your being here.

Dr. Williams, we are ready for you.

Dr. **Williams**. Thank you.

I am David Williams, private practice in pediatrics in Thomasville, N.C., today representing the American Academy of Pediatrics, dedicated to the health and welfare of infants and adolescents.

The Education for All Handicapped Children Act, Public Law 94-142, is clearly one of the most significant pieces of legislation to address the education needs and rights of handicapped children. Since its implementation, commendable progress has been made toward providing a free and appropriate public education for all handicapped children.

The academy is strongly committed to the intent of this legislation and believes its potential for success is great. It is expected, however, that a program which endeavors to make such significant changes will often create new problems as well as crystallize our perception of the old as such is in the case in the law. The overriding and fundamental problem is that despite the passage of Public Law 94-142, millions of handicapped children are still not receiving a free and appropriate education and related services. The reasons for this failure are varied and complex.

As pediatricians, we will focus on those areas best served from our expertise. The academy strongly believes that an interdisciplinary effort is critical to success of this program. Education of the handicapped child is no longer the exclusive domain of any one profession. The accurate identification, evaluation, and management of programs to meet the complex needs of these children demand a corroborative effort from a number of different disciplines. Physicians are excluded from participating in the implementation of this law to a level commensurate with the demand for their skills and training.

I would like to talk about several aspects of the law from that standpoint. First would be an identification. We feel that pediatricians are probably those people best able to identify these children early. Some can be identified from birth. You pick up various types of problems that you know will lead to various types of handicapping conditions, and we would urge that physicians be brought into this identification process and it not be just an education identification, but that physicians be brought into it early.

We do believe that early intervention is crucial, that with early intervention we could prevent a lot of handicapping conditions and lots of complications of these conditions.

We would recommend that eventually the law extend to birth. We would recommend that this not be the exclusive domain of education and that if we extend the law downward, that people from the medical profession be brought into it so that they can make recommendations about what type of intervention is needed. This is being done in other bureaucratic systems. I know that we are trying to identify child delivery. We are trying to see a good sense of cooperation so that all children will be eligible for this identification and not those just eligible by various types of financial criteria.

Another issue is the evaluation process. Under this law, it is not clear if all children need a medical examination. We certainly feel that most children do deserve a good medical and comprehensive evaluation, including physical examination and layup. We would not necessarily like to see this mandated, that all children who enter the education system have that evaluation. We feel that a lot have been tied into a primary care physician. Most of us have children who have an inch or two—a chart in our office, meaning that we have identified them, we have rapport with the parents, we have sent them to various referral sources. The real problem is that we work with them from birth to age 4 or 5, and they enter school, they are having problems and we do not have a good rapport with the school.

We would urge a good sense of cooperation between the school officials and private physicians, some way to foster a good sense of cooperation. I do believe that, historically, this has been hard to do with physicians. They have been aloof, they have been hard to work with, they have been hard to reach. I do think that this trend has changed and that physicians now are aware of the problems of these children in schools and stand ready to work with them.

We do believe that IEP is important. We would like more medical input into the IEP. We feel that if discussion was brought into the spirit of this law in terms of identification, intervention, and assessment, that it would just be natural to have this opinion for the IEP.

We recognize the fact that there are many children who enter the educational system without previous good assessment from physicians. They have not had good primary care. They have not had good medical care. We recognize that there are perhaps millions of those entering school. We would encourage that those children be evaluated medically. We would encourage that they be seen by some type of medical care facility and that these opinions and recommendations be incorporated into the IEP. We do have a serious problem with related services. We feel that the scope of this has not been identified. We feel that many children cannot be educated in a special education system without identifying and helping with related services. The schools particularly have done a good job with this, with hearing and speech. Perhaps they have not done a good job with psychological testing, psychiatric and counseling and many other areas.

We feel that these services are available much more than people feel; that perhaps they are available already in the system; that this is not being perceived by the schools and with better perception by the schools, we feel that many of these services are available. Obviously, there is a big economic impact of this law. Carrying through with all the related services will be expensive. We would caution against leaving the related services out of the IEP. We would hope to strengthen interagency agreements. We would not like to see unprecedented withdrawal of services by public agencies operating with public funds sources other than BEH.

We would not like to see withdrawal of responsibility for third-party reimbursement, which is being done, and is not in the spirit of this law. We certainly would like to see a more clear definition of the scope of related services. We feel that the general failure to provide related services to handicapped children stands as one of the most critical barriers to the successful implementation of this law.

The American Academy is not just beggars. We have been providers. We have convened a national organization of providers for one meeting to discuss the problems of related services. We plan to have another meeting. This is most productive and we feel that it will help.

We also have a project ongoing in the academy funded by the Office of Special Education of the Department of Education to help train pediatricians. We hope to train 1,500 by December of this year. We recognize that pediatricians need to have a better understanding of the law, have a better understanding of how to work with the schools, have a better understanding of the handicapped child. Pediatricians have historically been interested in the handicapped child but we do feel that this project will help and we are appreciative for the money and the funding.

We are in the process of a development plan, of a program to define and interpret Public Law 94-142, to the leaders of the chapters, their States. This is in the early stages, but we do feel it is important. We do not shy away from the request for more funds. We feel that this is important. However, we also feel that bringing the physician into this law, more direction from the central Government in how to bring the physician in, using the records of those who have been seen, using the assessment for all children, would be important.

We appreciate the opportunity to speak today. Thank you.

Senator **Stafford**. Doctor, we are grateful to you and to Dr. Ramage for helping us in our consideration of 94-142. I think you are the first pediatrician who has testified in front of the subcommittee. I will give a lot of weight to what you have told us here this morning. So we are grateful to you both.

We may submit some questions in writing to you and I can assure you that the other members of the subcommittee will be interested in what you have told us today.

Thank you very much.

[The prepared statement of Dr. Williams along with questions and answers follow:]

American Academy of Pediatrics

Testimony

before the

Subcommittee on Handicapped
Committee on Labor and Human Resources

Oversight Hearings on

P.L. 94-142
Education for All Handicapped Children Act

Presented by

David R. Williams, M.D., F.A.A.P.

July 31, 1980

Division of Government Liaison
1800 North Kent Street
Arlington, Virginia 22209
703-525-9560

Mr. Chairman, I am David Williams, a private practicing pediatrician in Thomasville, North Carolina and Chairman of our state chapter of the American Academy of Pediatrics. The Academy is an international association of 22,000 pediatricians dedicated to the health and welfare of infants, children and adolescents. It has a deep and long-standing commitment to the issues affecting our nation's handicapped children. Since the Academy's Committee on Children with Handicaps was established in 1957, it has undertaken a variety of measures to improve the conditions affecting such youngsters. In 1966 the committee initiated a project to explore all appropriate means to develop a significant partnership between pediatrics and special education in the early identification of various handicaps, and it has continued to pursue this effort. Most recently, the Academy launched a joint effort with the Bureau of Education for the Handicapped to develop extensive training programs for pediatricians and other physicians in the diagnosis and care of handicapped children.

The Education for All Handicapped Children Act, P.L. 94-142, is clearly one of the most significant pieces of legislation designed to address the educational needs and rights of handicapped children. Since its implementation, commendable progress has been made toward providing a "free and appropriate public education for all handicapped children." The Academy is committed to the intent of this legislation and believes its potential for success is great.

It is also to be expected, however, that a program which endeavors to make such meaningful changes often will create new problems as well as crystallize our perception of the old. Such is the case with P.L. 94-142. The overriding and fundamental concern is that despite the passage of P.L. 94-142, millions of handicapped children still are not receiving the free and appropriate education and related services guaranteed them by law. The reasons for this failure are varied and complex; as pediatricians, we will focus on the areas best served by our expertise.

The Academy strongly believes that an interdisciplinary effort is critical to the success of this and other programs to ameliorate the conditions which hamper handicapped children. Education of the handicapped child is no longer the exclusive domain of any one profession. The accurate identification, evaluation and management of programs to meet the complex needs of these children demand a collaborative response from a number of disciplines. As such, we believe that health and education cannot be separated when considering the handicapped child.

It is plain that P.L. 94-142 intended to affirm this belief when it assured all handicapped children a free, appropriate education emphasizing special education and related services to meet their unique needs. In reality, though, handicapped children are not receiving the support services necessary for them to benefit from special education. We are particularly concerned that the critical relationship between a handicapped child's health and his or her educational success has been ignored throughout the implementation of this law.

The Academy believes this failure to provide handicapped children the related services necessary to benefit from special education stands as one of the most critical barriers to the implementation of P.L. 94-142. Although there are several reasons for this failing, that we will examine in our testimony, a most serious problem is that P.L. 94-142 has structured a role for physicians and other related-service professionals that does not allow them adequately and appropriately to contribute their knowledge and skill to the children served by this legislation. Consequently, in the implementation of this statute physicians are excluded from participation at a level commensurate with their abilities, training and interest.

Let us now examine the specific aspects of this legislation.

I Identification

A sound and accurate identification program is critical to the success of this law. Yet it is well known that a significant number of eligible children are not being identified due to gaps and inconsistencies in present identification systems.

Shortcomings in these identification systems are particularly disturbing because there are medical and educational programs in operation which identify infants or children as high risk for later developmental disabilities. The factors indicating that risk are often best recognized by the physicians who have provided ongoing health supervision through prenatal and postnatal care. For instance, there is ample evidence that infants under age 3 with severe disabilities can be identified quite early. Many of these babies have been followed for medical problems or as high-risk infants as a result of care in premature nurseries and newborn intensive care units. Unfortunately, many screening programs have been instituted to detect developmental problems without any consultation with the physician providing the child's ongoing medical care. Models built solely into the educational system are often not successful in reaching very young children, as they have few links with the primary health care system, the major source of care for the high-risk infant. On the other hand, many handicapped children are missed because physicians may not know how services can be obtained or what referral alternatives exist. To alleviate this problem, we recommend that the follow-up of children by the medical profession be clearly linked to whatever identification programs are provided through the education system under P.L. 94-142. The key to the success of such a model, however, is that it will tie identification to referral and follow-up so as to establish continuity of care.

II Early Intervention

There is little argument that the long-range solution to the problem of handicapping conditions is to prevent them in the first place. Thus the Academy considers it essential that greater emphasis be placed on early intervention programs that begin to apply known rehabilitative techniques to correct disabilities at the earliest possible age, when they are most effective. We recommend that the age limits covered by P.L. 94-142 eventually be extended to birth so that remedial action can take place at the earliest appropriate time.

Infants who are blind or deaf, visually impaired, multiply handicapped, moderately or severely retarded, orthopedically impaired, severely disturbed emotionally (such as the autistic child) or suffering from other health impairments all profit from intervention programs when started early. Such intervention techniques and programs are preventive in that they minimize and attenuate the handicapping conditions of developmental abnormalities. As such, these programs are the most cost-effective means of avoiding institutionalization and more complex systems of care.

At present it is optional that states provide services to children under age 5. Although we appreciate the fiscal implications underlying this provision and the concern about variances in state school age requirements, the costs to society over the long run will be considerably less if delay is avoided. Systematically reaching handicapped children during the pre-school years provides options which no longer may exist at ages when children usually enter the educational system. Certainly, the earlier the intervention, the greater the long-range benefit to the child and family.

We again would caution, however, that to lower the age mandate for educationally directed programs, without providing for the appropriate interaction of the medical field, would be a disservice to all handicapped children.

III Evaluation

Another critical issue is the evaluation process whereby the handicapped child's needs and services are determined. It should be obvious that the child's health needs warrant extensive consideration. However, an Academy review of state regulations determining the extent of physician participation in the evaluation process concluded that "the actual frequency with which a physician's examination is utilized as part of the evaluation process for special education is not consistent with P.L. 94-142 policy, which includes health as a recommended area of assessment." The study discovered that only 35% of the states require or recommend that a medical evaluation be part of the evaluation process for all handicapped children suspected of needing special education.

As an example, in a recent survey, 39 Special Education Agencies which were contacted stated that an educator decides whether a physician should be consulted concerning the medical needs of a child. That is, if a mentally retarded first-grader is being evaluated by an educationally directed team, then that team (without medically trained personnel) decides whether a neurologic examination is required or whether laboratory testing is needed to determine if the child is anemic.

The Academy recognizes that not all children with handicaps have health needs different from those of the general population. However, many of these children, especially ones with sensory and developmental defects, demonstrate clear medical implications. Furthermore, handicaps which involve behavioral or learning problems on occasion have some link to the child's health status and may have been ameliorated if given medical attention.

If one accepts that a significant number of the conditions and diseases causing developmental disabilities have medical and health-related causes, and that many handicapping conditions are correctly associated with ongoing major medical conditions, then one must rely on medically trained personnel to define the nature of these handicaps accurately.

For example, take the case of a child with paralysis of all four extremities, a language delay and an articulation problem. In this case, the value of the primary care physician in educational planning can be demonstrated in many ways. The physician may learn that jaundice during the newborn period was the cause of the child's cerebral palsy. This, in turn, often leads to impaired auditory nerves which result in a high-frequency hearing loss. With this knowledge, the physician will immediately refer the youngster to an audiologist. Moreover, the physician may realize the child with this condition frequently has an associated nearsightedness. If this has not been checked previously, he or she would request an ophthalmologic exam. The primary care physician also knows that this youngster is susceptible to developing contractions of the joints if not given appropriate preventive physical therapy. Therefore, referral to a physical therapist probably would be made. In addition, a physician may realize that a careful evaluation by a physiatrist may result in certain orthotic aids which would allow the youngster to write more clearly, transfer from wheelchair to school seat or, if necessary, to toilet seat. Lastly, the primary care physician may note that the child is having subclinical seizures (lapses of consciousness that may not be evident to the casual observer). An electroencephalogram will confirm this and appropriate medication may then be prescribed. There are numerous similar examples that can be cited. While many children with learning problems may have no physical defects, frequently a medically treatable cause of learning disabilities is uncovered with a careful health exam. For example:

- a slow-learning child may prove to have a thyroid malfunction which could be treated adequately with thyroid medication;

- a slow learner may have his or her problem secondary to lead intoxication.

Arguments have been cited that procedures are too costly and a physician's time too restrictive for a medical evaluation to be provided each child being considered for special education services. What has not been considered are the advantages, in terms of time and cost, of developing an intermediate method or procedure to be administered by the physician which would provide more educationally relevant information than a screening process, yet would be less extensive than a comprehensive medical evaluation. Such a procedure would be of use in evaluating children who do not present readily identifiable medical conditions and/or whose behavioral and learning problems respond well to accepted educational practices.

Therefore, we recommend that all children involved in special education programs under this legislation be evaluated by a physician who is knowledgeable of the child's past medical and developmental history, including a physical examination and appropriate laboratory testing to determine medical conditions that may be causing, or at least influencing, the child's enrollment in special education programs.

IV Individual Education Plan (IEP)

We are acutely aware of the positive value of medical input if it is used as an integral component of the IEP process. When indicated, medical treatment of a specific handicap is essential to the educational success of a given child.

As such, the Academy considers it essential that a physician be consulted prior to writing the IEP for each child to ascertain medically related factors and services needed for the child to benefit from special education. The degree of that involvement and the presence of the physician at the IEP conference should be determined by the needs of the child. In certain cases the physician may feel strongly that the child's health needs require his/her presence at such a team meeting. In other instances, it may be that a report or completed form will suffice. Primary care physicians also should be responsible for determining what other medical consultations are necessary as they are most knowledgeable of the medical needs of the disabled child. It seems inconceivable that the primary care physician who has followed a handicapped child since birth, who has prescribed physical and occupational therapy, who has recommended speech therapy, who has provided the parents with major guidance during the early years of their child's rehabilitative course, should be effectively denied the opportunity to continue that relationship once the child enters the educational process. Although the law does not prohibit physicians' involvement in this regard, neither does it facilitate their participation.

A specific example of the need for medical input is a child who was born prematurely and who lacked adequate amounts of oxygen during birth. This oxygen deficit can cause an injury to the brain, a condition that could interfere with smooth coordination of the arms and legs. The physicians who cared for the child during the newborn period would be aware of the potential damage and would carefully monitor the child's development during the first year of life. Prescriptions for braces, splints and special chairs and devices often are provided by the primary physicians or medical specialists to whom the child is referred. Visual and hearing defects are potential problems and would be carefully evaluated. Orthopedic surgery, if required, would need to be coordinated with the educational program of the child. If walking is impaired, wheel chairs and braces are additional concerns and would have to be prescribed in addition to physical and occupational therapy guidance for their use in the classroom setting.

Additionally, the physician would possess information concerning the child's seizure problems, if they existed, and would be knowledgeable regarding side effects of medication used for convulsions. Teachers and physicians can develop effective mechanisms to share this information regarding expected reactions and the child's actual reactions in the classroom.

It would appear that the preceding information would be invaluable to the educational team in planning an IEP for this child, yet the majority of such IEPs are currently generated without any attempt to secure such information, let alone with any structured method to use the information even if supplied by physicians.

The omission of the physician as an essential participant in regulating the development and implementation of the IEP has led to discontinuity of care and has created communications problems between schools and physicians. Parents often are forced to seek independent medical advice, evaluation and treatment because the IEP did not reflect medical input. Also, if pediatricians, physicians and other professionals are to work together to improve the opportunities for handicapped children, then mandating inclusion of medical participation in the IEP planning process, while advising parents of what they can expect and how they may go about requesting services for their children, is necessary. Such measures also could result in a decrease in the number of requests for appeals and/or independent evaluations.

V Related Services

The importance of the relationship between special education and related services cannot be understated. This view is supported by the Bureau of Education for the Handicapped (BEH) in its first annual Report to Congress on the Implementation of P.L. 94-142. "Implicit ... in the Act itself ... are the fundamental ideas that education of the handicapped must include related services in addition to special education, whenever these services are needed, and that a wide array of services should be available to meet children's unique needs."

In reality, however, many handicapped children are not receiving the services necessary for them to benefit from special education; indeed, in several cases, they are even being denied services provided them prior to P.L. 94-142. Part of the problem already has been alluded to, that is, in order for a handicapped child to receive the necessary related services, knowledgeable people from various fields must have input into the evaluation and/or IEP process to diagnose needs and prescribe services.

However, the problem goes far beyond this. With the advent of P.L. 94-142, school districts are now responsible for ensuring that handicapped children are provided services necessary for them to benefit from special education. Because schools have not provided many of these services in the past, this new responsibility demands close coordination with public and private agencies which do provide them. Several problems have ensued.

1. Perceived Availability of Services

   Most would agree that the array of services demanded by P.L. 94-142 is far more comprehensive than existing service systems can provide. However, it is important to recognize that the actual services and service providers do, for the most part, exist. That these services may be available outside the public school system, though, has not been explored thoroughly. In practice, of course, the task is to make these services available to handicapped children and young adults who require them. Given that these services are available, we must identify the systematic barriers which preclude their use.

2. Economic Impact

   This reason often if given in response to the previous question as the availability of services usually is also a function of the ability to pay for them. And, as we are well aware, school districts are already financially strapped. For several years school district administrators have informed state and federal officials that economic realities constrain efforts to provide for additional mandated services.

   As a result of the above two factors, a disturbing parallel trend has emerged. It involves the widespread practice of omitting recommendations for related services from the individualized education plans developed for handicapped children. School districts and states improperly have narrowed the definition of related services so as to exclude many essential and legally required services from the child's IEP. Many professionals have indicated that instead of expanding the realm of support services, many school districts attempt to meet the need only within the scope of programs and services available. Teachers are told not to list available services for a child that are too costly to the system. In essence, the child's needs are "adjusted to meet the realm of services available." The logic is simple -- no one is accountable for services which never are recommended.

3. Ineffective Interagency Agreements

School districts, states and BEH have failed to work out effective interagency agreements to furnish access to federal programs already providing "related services." Although such agreements have been pursued and are "in place," too few have been implemented effectively at the state and local level. Nor do existing agreements involve all the appropriate agencies providing these services. At least, these agreements should be expanded to include Maternal and Child Health, Title XX, Indian Health and a variety of other agencies.

Although such coordination takes time, considerable effort and money, we believe such efforts are critical to the success of this program.

4. The unprecedented withdrawal of services by public agencies operating with federal funds from sources other than BEH

This withdrawal was apparently predicated on the belief that state education agencies now have the sole responsibility for educating handicapped children and young adults. There appears to be development of the "dumping syndrome," where other agencies, public and private providers of education and related services, are shifting fiscal responsibilty for handicapped children to the schools. Of course, part of this problem is attributed to the failings of interagency agreements. In another sense, P.L. 94-142 has created a tangle by transferring responsibility for services provided, without clear legal authority to establish educational policies for other agencies or to monitor and enforce those standards. This transition of service provision, coupled with the lack of funding, has created an enormous gap in the services delivered to handicapped children.

5. The withdrawal of responsibility for third-party reimbursement

In at least one state, a major health insurer has refused to underwrite previously reimbursible expenses for evaluation and treatment services to handicapped children and young adults, citing the local public schools' responsibility to pay for such services if they have been indicated as required in conjunction with a child's program of special education. This has occurred in spite of the specific statement of the law which indicates that private insurers are not relieved of their responsibility to cover such services.

6. Lack of a clear definition of the scope of "related services"

A most critical problem is the lack of a clear definition of "related services." There is widespread confusion concerning the extent to which supportive services are necessary for a child to benefit from special education. For example, while we realize that certain handicapped children require physical therapy, the question remains, "To what extent does this physical therapy relate to the child's ability to benefit from an education program?" The same dilemma is faced when a school district must consider the need for individual or family counseling. There are obviously myriad other examples. Given that a child's total program of special education must be viewed, in principle, as an entity combining specially adopted instruction and related services, we believe this issue surfaces as a central component of the overall program.

The tragic net effect of the foregoing is that in the face of the demand for greater services to children identified as handicapped, it is likely that fewer services are actually available. What is especially tragic is that all or most of these so-called related services are clearly available, either within the educational system or allied disciplines.

The general failure to provide related services to handicapped children stands as one of the most critical barriers to the successful implementation of P.L. 94-142; it must be addressed.

Although we cannot pretend to know all the answers to these problems, certain strategies are clear:

1. Clarify and improve funding and programmatic service delivery roles and responsibility;
2. Escalate efforts to implement interagency agreements at local and state levels; expand these to include all appropriate agencies;
3. Identify structural barriers to use of public and private "related service" providers and develop mechanisms to use these services;
4. Clarify definition of scope of "related service;"
5. Monitor more closely and enforce existing regulations;

In an effort to address some of these related service issues, the Academy recently convened a meeting of national organizations whose members typically provide such services. (See Appendix I for list of participating organizations.) We anticipate convening several of these meetings with the hope of finding answers to some of the critical questions.

VI State Agency Advisory Panel

Although we realize that the states are responsible for the composition of their own State Agency Advisory Panel, we strongly urge that physicians be included as members of these panels. A recent survey indicates there are presently only 13 physicians serving on these panels or in this capacity.

We believe that medical input at this policy level will encourage greater physician participation in P.L. 94-142 activity, as it has been demonstrated that medically related screening, evaluation and treatment procedures devised on a state-by-state basis are capable of being cost-effectively interwoven into the individual state's educationally related processes. Physicians long have been discouraged by identification programs without supporting remedial projects, and by duplication of identification endeavors by educational and social agencies when the child's problem is already well known by his or her personal physician.

We strongly recommend that physicians be invited to serve on such panels to assist the State Educational Agency in formulating plans that include the existing medical projects and to stimulate provision of those proven successful in other states.

VII In-Service Training Surveys

The Academy recommends that physicians and all related-service personnel be included in the annual in-service training surveys mandated by P.L. 94-142. We believe that this will be a critical first step toward building a better informed and coordinated network of personnel to implement the law, and the Academy has demonstrated its willingness to assist in this process.

One of the initial moves the Academy made in devising a training curriculum for physicians was to identify their in-service training needs. In so doing, we discovered that physicians have not been included as part of the annual surveys.

Since passage of this law, the Academy has taken a variety of measures to encourage physicians' involvement with P.L. 94-142. More than ever we recognize the need for pediatricians to be trained in the specifics of the educational system, and we have launched a joint effort with the Bureau of Education for the Handicapped (BEH) to develop extensive training programs for pediatricians and other physicians in the diagnosis and care of handicapped children. (See Appendix II for Curriculum Content.) By the end of this three-year project, we expect to have trained more than 5,000 physicians. We are most enthusiatic about this program and believe that BEH should be commended and encouraged to continue such initiatives. We further believe that these programs eventually will facilitate the participation of all necessary related-service personnel. At least three other training programs, initiated by physicians, which are also fully or partially funded by BEH, are directed toward providing physicians in training and practice with the necessary knowledge and skills to provide optimal care to children with handicaps.

11.

No discussion of this legislation would be complete without considering the economic problems which impede its success. Clearly, the P.L. 94-142 mandate to provide all handicapped children a free, appropriate education and related services is an expensive endeavor which demands significant financial commitments. Yet states are required to implement and enforce this law with inadequate funding from both the state and federal government. The abysmal level of federal aid already has forced local districts to use financial stopgap measures which will not hold up in the long run.

If Congress is truly dedicated to this legislation and the children it proposes to serve, it must authorize and appropriate more realistic funding levels. No amount of reforms or clarification in the regulations can make this law effective if the money isn't there to implement it.

In summary, we thank you for giving the American Academy of Pediatrics the opportunity to present our concerns regarding P.L. 94-142. The Academy strongly supports the concept of this legislation, but we reiterate respectfully our viewpoint that physician participation must be encouraged through regulations to allow them to bring the full impact of their training and abilities to bear on the handicapped child by fostering cooperation between the medical and educational systems. Failure to achieve this cooperation will lead to discontinuity of care, duplication of service and failure to identify the child at the earliest possible moment when the potential for remedy is greatest.

This cooperation can be further strengthened through the recognition that many handicapped children have medically related, diagnostic and health concerns that contribute to their educational disability, and that physician involvement in the remedy of such disabilities will be of assistance to those concerned with the child's educational program.

Appendix I

AD HOC NATIONAL MEETING OF RELATED SERVICES PROVIDERS

National Professional Associations	Representative
American Academy of Pediatrics 1801 Hinman, P O Box 1034 Evanston, Il. 60204	Alfred Healy, M.D., FAAP University Hospital School University of Iowa Iowa City, Iowa 52240
American Academy of Child Psychiatry 1424 16th St., N.W. Suite 201A Washington, D.C. 20036	Jay Hirsch, M.D. 1971 Second Street Highland Park, Il. 60035
American Medical Association 535 North Dearborn St. Chicago, Il. 60610	Herbert Grossman, M.D., FAAP Child Development Section UCLA/NPI Pacific Research Group P O Box 100-R Pomona, CA 91766
American Occupational Therapy Association 1383 Piccard Drive Suite 300 Rockville, MD 20850	Ms. Jane Davy
American Physical Therapy Association 1156 15th St., N.W., Suite 500 Washington, D.C. 20005	Ms. Carolyn Heriza 1619 West Hedgecroft Seabrook, TX 77586 Mr. Garry Garrett Associate Director Professional Relations Department
American School Health Association P O Box 708 Kent, Ohio 44240	Mrs. Virginia Thompson Director, School Health Houston Independent School Dist. 3830 Richmond Ave Houston, TX 77027
American Speech, Language and Hearing Association 10801 Rockville Pike Rockville, MD 20852	Stanley Dublinske, M.A. Director, School Affairs Program
National Association of School Nurses, Inc. Statler Hilton Hotel, Suite 104 7th Ave & 33rd St. New York, N.Y. 10001	Ms. Peggy Rufner 7706 John Hancock Lane Dayton, Ohio 45459

National Professional Associations	Representative
National Association of School Psychologists 1511 K St., Suite 927 Washington, D.C. 20005	Jean Ramage, Ph.D. San Diego State University San Diego, CA 92124
National Association of Social Workers 1425 H St., N.W. Suite 600 Washington, D.C. 20005	Mrs. Nancy Banchy Minnesota State Department of Education 651 Capitol Square 550 Cedar St. St. Paul, Minn. 55101

AD HOC NATIONAL MEETING OF RELATED SERVICES PROVIDERS

Resource Consultants

1. Legal Consultant: H. Rutherford Turnbull, III, J.D.
Assistant Director, Institute of Government
P O Box 990, University of North Carolina
Chapel Hill, N.C. 27514

2. Office of Special Education:
Bob Henneson-Walling
6206 Tecumseh Place
Berwin Heights, MD 20740

3. Office of Maternal and Child Health:
Merle McPhearson, M.D., Chief
Rehabilitation Services Branch
Office of Maternal & Child Health
Dept of Health & Human Services
5600 Fishers Lane, Room 722
Rockville, MD 20857

4. C. C. S. S. O.: Judy Riegelhaupp, Associate Commissioner
Special Education
31 St.James Ave
Boston, Massachusetts 02116

5. N. A. S. D. S. E.: Leonard Hall, Ph.D.
Division of Special Education
Department of Elementary & Secondary Education
P O Box 480
Jefferson City, Missouri 65102

6. L.E.A. : Larry Vuillemot, Ph.D.
4440 Grand Ave
Gurnee, Il. 60031

7. State and Territorial Directors - M.C.H. & C.C.:
Horace K. Tenney, III, M.D.
Division of Public Instruction
126 Langdon St.
Madison, WI 53702

Appendix II

CURRICULUM CONTENT

The course is divided into four major units:

The Child
The Family
The Education System
The Community

Unit 1, The Child, examines the role of the primary care physician along three dimensions: identification of handicapping conditions, medical evaluation, and the continuing health care of handicapped children and young adults. Each of these three dimensions is examined with regard to both current practices and recent advances. Obviously time will not permit any one area to be covered thoroughly. A list of topics in each area is currently being developed as possible areas to be covered. This will allow you to select from several predetermined topical areas that you choose to include in this first module. We will be giving you these topical areas by July 11 so that you may begin making preliminary plans and consider each of the options.

Unit 2 introduces the physician to the family unit. The module addresses problems in physician/parent communication and the physician's role as counselor to the parents of a handicapped child. A series of short videotapes presenting parents discussing problems associated with parenting a handicapped child serve as points of departure for group discussion centered around the following issues:

1) Informing parents their child has a handicap.
2) Acquainting the physician with the initial and long term psychological impact of having a handicapped child.
3) Parents reactions to the news that they have a handicapped child.
4) The impact of the handicapped child on a marriage.
5) The impact of the handicapped on siblings.
6) Parental perceptions of the physician's role in helping them manage their handicapped child.
7) Parental coping and adjustment difficulties in the community.

In Unit 3, state and local legislation and practices are discussed to acquaint the physician with the particular demands and resources of his/her locale. This will be followed by the presentation of case studies to illustrate the problems a physician is likely to encounter as it applies to his/her particular state and his/her particular role in its implementation. This unit is developed around an educational planning model. It examines the process by which handicapped children are identified, their educational needs assessed and their programs planned, implemented and monitored within the educational system.
Unit 4 seeks to highlight for the physician critical issues and problems faced by the handicapped in the community. These areas include independence, independent living, social integration, employment, sexuality, and parenting. Short videotapes cover parental expectations of the future for their handicapped child, the physician's role in life planning for handicapped children, attitudes and human differences, and perspectives of handicapped young adults.

NR:ce
6-16

Dr. Williams

American Academy of Pediatrics
Summary of Recommendations for P.L. 94-142
Education for All Handicapped Children Act

P.L. 94-142, the Education for All Handicapped Children Act was passed in 1975 and provides that "all handicapped children will have available to them a free, appropriate public education emphasizing special education and related services designed to meet their unique needs;..." While commendable progress has been made since implementation of this legislation, the Academy believes several critical disparities and ambiguities in the law require clarification before P.L. 94-142 can truly meet the needs of handicapped children.

A most serious problem we have encountered to date is that the law has structured a role for physicians that does not allow them to adequately and appropriately contribute their knowledge and skill to children served by this legislation. Consequently, physicians are not participating in the implementation of this law to a level commensurate with the demand for their skills and training.

The following is a summary of the Academy's recommendations for changes in the existing program.

1. Identification

A significant number of eligible children are not being identified due to gaps and inconsistencies in present identification systems. Shortcomings in these identification systems are particularly disturbing as they are medical and educational programs in operation which identify infants and children as high risk for later developmental disabilities. However, many identification programs are educationally administered and do not include physician input.

Therefore, we recommend screening programs to detect developmental disabilities should include consultation with the physician providing the child's ongoing medical care.

2. Early Intervention

The fundamental and long-range solution to handicapping conditions is to prevent them in the first place. Greater emphasis should be applied to early intervention programs that begin to apply known rehabilitative techniques to correct disabilities at the earliest possible age, when they are most effective. We recommend the age limits covered by P.L. 94-142 should eventually be extended to birth.

3. Evaluation

All children involved in special education programs under P.L. 94-142 should have an evaluation by physician who is knowledgeable of the child's past medical and developmental history. We believe this is consistent with P.L. 94-142 mandates; however, a recent Academy survey revealed only 35% of the states required a medical evaluation for a handicapped child requiring special education.

4. Individual Education Plan

It is essential that a physician be consulted during the development of an IEP for each child. The degree of physician involvement and the physician's actual presence at the conference should be determined by the needs of the child.

5. Related Services

The general failure to provide related services to handicapped children stands as one of the most critical barriers to the successful implementation of P.L. 94-142. The reasons for this failure can be collapsed into the following general areas:

a. Perceived availability of services: For the most part actual services and service providers do exist; that they may exist outside the educational systems, however, has not been thoroughly explored.

b. Economic impact: The availability of services is also a function of the ability to pay for these services.

c. Ineffective interagency agreements.

d. Unprecedented withdrawal of services by public agencies operating with federal funds from sources other than BEH.

e. Withdrawal of responsibility for third-party reimbursement.

f. Lack of a clear definition of related services.

Testimony suggests strategies to address these problems.

6. State Agency Advisory Panel

Physicians should be included as members of the State Agency Advisory Panels so as to assist State Educational Agencies in formulating plans that include existing medical systems of care.

An Academy survey revealed that only 13 states had physicians represented on their panels.

7. In-Service Training Surveys

Physicians are not included in the annual personnel surveys required as part of the state's annual plan.

In fact, physicians are one of the only personnel for which annual reporting data are not now required.

Therefore, we recommend all related service personnel should be included in the annual in-service training surveys (mandated by P.L. 94-142) as a critical first step towards building a better informed and coordinated network of personnel to implement the law.

American
Academy of
Pediatrics

50th
Anniversary
1930-1980

Division of Government
Liaison
American Academy of
Pediatrics
1800 North Kent Street
Arlington, Virginia 22209
(703) 525-9560

Elizabeth J. Noyes
Director

President
Bruce D. Graham, M.D.
Vice-President
R. Don Blim, M.D.
Executive Director
Robert G. Frazier, M.D.
Secretary
Gerald E. Hughes, M.D.
Treasurer
George A. Neuman

District Chairmen
Sprague W. Hazard, M.D.
Deerfield, Massachusetts
Milton Gordon, M.D.
Huntington, New York
Allan B. Coleman, M.D.
Washington, D.C.
Martin H. Smith, M.D.
Gainesville, Georgia
William C. Montgomery, M.D.
Detroit, Michigan
Edmund C. Burke, M.D.
Rochester, Minnesota
Blair E. Batson, M.D.
Jackson, Mississippi
James E. Strain, M.D.
Denver, Colorado
Paul F. Wehrle, M.D.
Los Angeles, California
Rodrigo Loria Cortes, M.D.
San Jose, Costa Rica
Jacob Renato Woiski, M.D.
Sao Paulo City, Brazil
Angel Eduardo Cedrato, M.D.
Buenos Aires, C.F. Argentina

August 14, 1980

1980 AUG 18 AM 8 03

Received
Date 8 - 18 - 80
Subcommittee on
The Handicapped

Honorable Jennings Randolph
Chairman
Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

Thank you for giving me the opportunity to testify on behalf of the American Academy of Pediatrics at your subcommittee's oversight hearings on P.L. 94-142. Enclosed are our responses to testimony questions for inclusion in the hearing record.

The Academy appreciates your continued interest in our nation's handicapped children and looks forward to working with you in the future.

Sincerely,

David R Williams

David R. Williams, M.D.

Enclosures

DRW:ns

1. Could you provide us with a list of States which require a medical evaluation for a handicapped child needing special education.

A 1979 Academy review of state rules and regulations found that sixteen states require or recommend medical evaluations for all children requiring special education regardless of their handicapping condition. (See Appendix, Table I) Other states indicate the need for physician participation depending on the child's handicapping condition. (See Appendix, Tables II - IX) No state provides a guarantee that each child, upon being considered for special education services, would be seen by a physician for evaluation.

In fact, further study of the regulations reveals that only two states, Massachusetts and Maryland, base their recommendations for physician input in the child's evaluation solely on non-categorical needs. All other states, even those with general recommendations for physician involvement, provide some form of categorical framework which determines the type and frequency of physician input. This tendency to link physician participation to a disability implies a desire on the part of state education agencies to merely certify a child as eligible for special education services by virtue of his disability, rather than seeking to discover any instructionally relevant information through a medical evaluation.

For a more complete and thorough understanding of states regulations governing medical evaluations and the implications of those rules, I urge you to examine the attached appendix, excerpted from "Patterns of Physician Participation in the Evaluation of Handicapped Children for Special Education Programs: A Report on State Regulations 1979."

2. How would you describe the ideal physician consultation process a school should use in the development of an IEP for a handicapped child?

Ideally, the physician who has provided the child's ongoing medical care should be contacted prior to writing an IEP for each child. Such an initial communication would prevent duplication of services and allow the physician to share with the schools his knowledge of the child's rehabilitative history, his/her family, the success and/or failure of previously prescribed therapies and, most importantly, any medically related factors and services the child needs to benefit from special education. The degree of physician involvement thereafter and the presence of the physician at the IEP conference should be determined by the needs of the child. In certain cases the physician may feel strongly that the child's health needs require his/her presence at such a team meeting. In other instances it may be that a report or completed form will suffice. As such the primary care physician should also be responsible for determining what other medical consulations are necessary as they are most knowledgeable of the medical needs of the disabled child.

The critical point to note is that physicians must be given the opportunity to share with the school system their unique knowledge of the child's disability, to bring the full impact of their training and abilities to bear on the successful management of the handicapped child. Currently, the majority of IEP's are written without any attempt to secure medical input, let alone any structured method to use the information even if supplied by physicians.

In order to facilitate communications between the educational and medical systems, the Academy's Committee on Children with Handicaps is developing a form which will more readily extract and present the relevant information the two disciplines need to share. In addition, part of the Academy's training course will teach physicians about the educational model --how needs are assessed, programs planned, implemented and monitored. We hope such efforts will further promote dialogue and cooperation between these two disciplines.

The omission of the physician as an essential participant in the IEP process, has led to discontinuity of care and has created communications problems between schools, parents and physicians. If pediatricians, physicians and other professionals are to work together to improve opportunities for handicapped children, then mandating inclusion of medical participation in the IEP planning process, while advising parents of what they can expect and how to request services for their children, is necessary.

Attachment A

Excerpts from:

PATTERNS OF PHYSICIAN PARTICIPATION IN THE EVALUATION OF HANDICAPPED CHILDREN FOR SPECIAL EDUCATION PROGRAMS:

A REPORT ON STATE REGULATIONS

1979

William T. Twarog, M.Ed.

M.D. Levine, M.D.

Terry R. Berkeley

A collaborative effort of: Division of Ambulatory Pediatrics
Children's Hospital Medical Center, Boston

Bureau of Education for the Handicapped
Washington, D.C.

American Academy of Pediatrics
Evanston, Illinois

Supported by PR#451BH70139 from the Bureau of Education for the Handicapped, U.S. Office of Education, Department of Health, Education, and Welfare

III. ANALYSIS OF REGULATIONS

Introduction

The states' rules and regulations governing the involvement of physicians in the interdisciplinary evaluation of handicapped children for special education purposes have been summarized in table format in this section. Because the language of the regulations varies to a great extent, it was necessary for the authors to draw certain conclusions regarding the actual physician role in the evaluation process. Certain instances in which a decision was made on the part of the authors are as follows:

1. When a state indicates that a "specialist" is required to perform an evaluation, but that specialist's identity as a physician is not specifically noted, it is presumed that the "specialist" is not a physician. (For example, Texas requires that an "eye specialist" make the determination as to the extent of disability for the child with visual handicaps. Texas provides no further description of the "eye specialist"; therefore, it is presumed that this person may not be a physician, and thus is not included in this section.)

2. When a state indicates that a review of a child's health history, or a health, vision, or hearing screening be performed, the context in which this provision is made and/or the definition of the terms is utilized to determine whether or not a physician is intended to be the professional providing this service, in instances in which a physician is not explicitly cited as the professional. (Colorado, for example, provides for a review of a child's health history and current health status; however, because no mention is made of the professional who is to provide this service and because the definition of this process

implies that a school nurse may be able to provide this information, it is presumed that a physician is not involved in the process and, therefore, this information was not included in the analysis of the regulations, although it is included in the appendix. Similar terms are used by Illinois, Iowa, and Montana.)

3. Functions which are performed traditionally by a physician are presumed to require a physician's involvement even when no explicit mention of the professional is made. (Examples of such a determination are as follows: medical statement, report, information, findings and/or evaluation (Arizona, District of Columbia, Hawaii, Indiana, Kentucky, Texas); physical examination (Ohio); and neurological examination (Pennsylvania, Washington).

Further, any functions which are presumed to be performed by a physician, such as medical reports, statements, certifications of disability, etc., are presumed to involve an examination of the child by that physician and, therefore, the term "evaluation" is used to describe these processes.

4. When ambiguous language and/or punctuation is used, meaning is derived from the context or from previously used terminology and/or punctuation.

(For example, Hawaii notes that for the mentally retarded child, particularly for those with moderate and severe retardation, a medical examination is "essential". It was decided that the medical examination was a recommended procedure, but not required, on the basis of more directive language used in reference to other handicapping conditions, e.g., Hearing Impaired--"must consist of."

(In at least one instance, that of Nebraska, the professionals responsible for conducting an evaluation are simply listed after the handicapping condition. For three disability groups, it was determined by the authors that each professional mentioned was required for the evaluation process. This determination was made because the professions were separated by a comma rather than the word "or", which was used in the case of one disability group, thereby indicating an optional utilization of one professional or other.)

Non-Categorical Medical Evaluation for Special Education Services

After a review of state rules and regulations, it was found that sixteen states utilize the services of a physician in obtaining information concerning a child who may require special education services regardless of suspected handicapping conditions. Because of the number of qualifying provisions attached to the regulations, it is difficult to make a clear distinction between those states which require and those which recommend that medical evaluations be part of comprehensive assessment. Table I lists those states which require or strongly recommend and those which recommend or simply suggest medical evaluations. Additional treatment of these data may be found in Table X.

Further study of the state regulations reveals that other patterns emerge which determine the manner and circumstances surrounding the use of medical examinations. Although brief descriptions of these patterns follow, true understanding of the scope of the provisions may be gained only by referring to the exercepted regulations included in the appendix, studying each state's education code, and/or observing actual practice in each state.

TABLE I

Non-Categorical Medical Evaluation for Special Education Services

Required/Strongly Recommended	Recommended/Suggested
Connecticut	Arkansas
Massachusetts	California
Mississippi	Delaware
New Jersey	Louisiana
New York	Maine
Rhode Island	Maryland
Tennessee	New Hampshire
Virginia	South Dakota

1) Medical Evaluation Determined by Special Class Placement

Three states (Connecticut, Massachusetts, and Rhode Island) make the provision of a medical evaluation by a physician dependent, at least in part, on the possibility of the child being assigned to a self-contained or separate classroom.

Recent descriptions of the continuum of special education placement have been the foundation of the concept of the least restrictive alternative of P.L. 94-142. The continuum of placement ranges from the least restrictive setting, which is the regular classroom, to the most restricted, which is a hospital or institutional setting. The self-contained classroom is generally considered to be somewhat mid-way between these two extremes.

Connecticut requires that a medical evaluation, for the purpose of determining the nature and extent of a handicapping condition, be provided for all children who are expected to be placed in a special class for six months or longer. Similarly, a full evaluation, including a general medical assessment, is required by Rhode Island regulations for those children whose condition indicates that they will require placement in a self-contained special classroom.

The possibility that a child with special needs may spend as little as twenty-five percent of his/her time out of a regular classroom is adequate cause for Massachusetts to require that a full evaluation, including an assessment by a physician, be performed.

It should be noted that, although special class placements are significant, other factors as well are considered valid causes for requiring a physician assessment in Massachusetts and Connecticut.

2) The Physician as a Consultant to the Evaluation Team

Both Mississippi and New Jersey have unique regulations which require that the teams responsible for securing evaluative information about a handicapped child should have access to a physician on a consultant basis. Mississippi recommends that the physician should be a pediatrician; New Jersey indicates that a school physician should be available to the child study team.

3) The Physician as Team Member

New York requires that each school district should establish a "Committee on the Handicapped," the responsibility of which is to review and evaluate information on handicapped children at least on an annual basis. Of the minimum four members required for committee membership, one is a school physician, who is responsible for reviewing all medical data and interpreting it to the other committee members. The New York regulation is similar to those in Massachusetts and Louisiana which call for the physician to be a team member, and to have a continuing role beyond the evaluation phase of special education services.

4) Medical Determination of Special Education Eligibility

Two states, Tennessee and Virginia, rely on a medical diagnosis or report, among other criteria, to determine whether or not a child is eligible for special education and related services.

5) Medical Evaluation as a Component of the Comprehensive Assessment

Massachusetts, Rhode Island, and New Jersey each include an examination by a physician as a component of the comprehensive assessment of a handicapped child. Louisiana, also, provides for the comprehensive assessment of a handicapped child, but reserves the provision of a medical examination to the discretion of the Parish Supervisor (School Superintendent or designee, e.g. Administrator of Special Education).

Five other states (Arkansas, Delaware, Maine, Maryland, and South Dakota) indicate that a medical evaluation or medical diagnosis may be an appropriate component of the comprehensive evaluation.

One state, New Hampshire, follows the stronger lead of Massachusetts, Mississippi, and New York in suggesting that a physician might be considered for membership in its Special Education Evaluation/Placement Teams.

6) California

California is unique in its approach to the assessment of children for special education. It is similar to Massachusetts in attempting to avoid a categorical approach to providing special education, but like Vermont, another state which is non-categorical in approach, it does make reference to broad disability groups. Although an earlier version of the California Education Code made specific reference to the physician as a member of the assessment team, subsequent amendments only indicate that physicians, as well as nurses and other professionals, be available to the "admission committee." Reference to the availability of physician services is noted for mentally retarded and educationally handicapped pupils, yet no such mention was found for physically handicapped pupils.

CATEGORICAL MEDICAL EVALUATION FOR SPECIAL EDUCATION SERVICE

Hearing Impairments

Although P.L. 94-142 makes a distinction between the deaf and hard of hearing child, most states retain this distinction. They do not usually retain that distinction in terms of the specialist required to evaluate the existence of extent of hearing loss. The specialists most frequently called upon to perform an evaluation on the hearing impaired child are audiologists and physicians who specialize in auditory problems. Sixty-three percent call for some participation by a physician in the evaluation process (Table II).

Of the 20 states requiring an examination by a physician, five indicate that it must be performed by an otolaryngologist, nine by an otologist, and six do not specify the physician's area of specialization. Ten states require an audiologist's examination in addition to that of the physician. An examination by an ophthalmologist or optometrist is required by three states.

TABLE II

Hearing Impairments

An Evaluation by a Physician[1] is Required

Alabama[2]
Arkansas
Illinois
Montana
New Mexico
North Carolina[2]
North Dakota
Oklahoma
Texas
West Virginia[2]

An Evaluation by a Physician[1] and an Audiologist is Required

District of Columbia[3]
Hawaii[2]
Indiana
Michigan
Nebraska
New York[3]
Ohio
Rhode Island
Virginia
Wisconsin

An Evaluation May Be Performed by a Physician[1] or an Audiologist

Alaska
Idaho
Louisiana
Mississippi
Missouri
Nevada
New Hampshire
Oregon
Pennsylvania
South Carolina
Tennessee
Vermont

[1] Otolaryngologist, Otologist or Physician (specialty not indicated).

[2] Alabama, Hawaii, North Carolina and West Virginia require that an additional evaluation be performed by an ophthalmologist or an optometrist.

[3] The District of Columbia and New York require these evaluations only for the hard of hearing child.

Vision Impairments

Unlike the distinction between levels of severity in the auditory process, P.L. 94-142 includes both the blind and partially sighted in one category: the visually handicapped. Most states retain the distinction between blindness and partial sight, but generally utilize the same specialists for the evaluation of both degrees of impairment. Table III presents the states which require or recommend physician participation in the evaluation process. Fifty-nine percent of the states indicate some level of such involvement.

Of the 11 states which require a medical evaluation, all but one indicate that the physician be an ophthalmologist or an eye physician. Two states require that the child also be given a general physical examination and one state requires an additional examination by an optometrist. Nineteen states allow for the use of an ophthalmologist or an optometrist to perform the evaluation.

Table III

Vision Impairments

An Evaluation by an Ophthalmologist or Other Physician is Required	An Evaluation May Be Performed by an Ophthalmologist or an Optometrist
Alaska	Alabama
Arkansas	Delaware
Illinois	Florida
Michigan	Georgia
Nebraska[1]	Idaho
New Hampshire	Indiana
North Dakota	Louisiana
Rhode Island	Mississippi
Utah	Missouri
Virginia	Montana
West Virginia[2]	Nevada
	North Carolina
	Oklahoma
	Oregon
	South Carolina
	Tennessee
	Vermont
	Washington
	Wisconsin

[1] An evaluation by an optometrist is also required.

[2] West Virginia requires this evaluation only for the partially seeing child.

Physical and Health Impairments

Although most states follow the guidelines of P.L. 94-142 in making a distinction between the orthopedically handicapped and other health impairments, for the purpose of this analysis they will be treated as one group. Predictably, the utilization of physician services in the evaluation of children with physical and health impairments is the greatest (required in 79% of the states). Of particular interest is the fact that only six states specify that the physician responsible for the evaluation of orthopedically handicapped children should be a specialist (i.e., an orthopedist or the equivalent). Table IV lists the states in this category.

Although special education services extending into the home or hospital are not considered as a separate category by P.L. 94-142, many states include separate regulations defining eligibility criteria. Table IV-a presents the information regarding states which require a physician examination in order for a child to qualify for home or hospital services. Although a number of states include pregnancy, either in this category or as a separate classification, it has not been included in the consideration of this data, nor is it included in P.L. 94-142.

Emotional and/or Social Impairment

The regulations for P.L. 94-142 include serious emotional disturbance as a handicapping condition. The definition of that condition includes autism, but no social maladjustment, unless it is accompanied by serious emotional disturbance. Of the 29 states which either require or recommend a physician's evaluation, one combines social and emotional handicaps, one includes a separate category for the socially maladjusted,

TABLE IV

Physical and Health Impairments

An Evaluation Must Be Performed by a Physician[1]

Alabama
Alaska
Arkansas
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Kansas
Kentucky
Louisiana
Michigan
Mississippi
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
Tennesee
Texas
Utah
Virginia
Washington
Wisconsin[2]
West Virginia

---

[1] An Orthopedic specialist or other physician.

[2] Wisconsin "suggests" membership of an orthopedist, physiatrist or pediatrician on the interdisciplinary team.

TABLE IV - a

Home/Hospital Instruction

An Evaluation Must Be Performed by a Physician

Arizona
Arkansas
Connecticut
Florida
Georgia
Illinois
Indiana
Kentucky
Louisiana
Michigan
Missouri
Montana
Nebraska
New Jersey
North Carolina
Oklahoma
South Carolina
Washington
West Virginia
Wisconsin

one describes autism as a separate disability, seven use the term "behavior," and the remainder use "emotional" in conjunction with impairment, handicap, or disorder.

In Table V, it may be seen that only two states require a psychiatrist's evaluation and two states recommend such an evaluation. Five states require and three states recommend a general examination by a physician. There are nineteen states that require an evaluation by either a psychiatrist or a psychologist.

TABLE V

Emotional and/or Social Impairment

An Evaluation by a Physician is Required

Alabama[1]
Florida[1]
Ohio
Oregon
Virginia

An Evaluation by a Physician is Recommended

California
Louisiana[2]
North Carolina

An Evaluation by a Psychiatrist is Required

New Jersey
Pennsylvania

An Evaluation by a Psychiatrist is Recommended

Rhode Island
West Virginia

An Evaluation May Be Performed by a Psychiatrist or a Psychologist

Alabama[1]
Arkansas
District of Columbia
Florida[1]
Hawaii
Indiana
Iowa
Kentucky
Michigan
Mississippi
Missouri
Montana
New Mexico
New York
North Dakota
Tennessee
Texas
Utah
Washington

[1] Alabama and Florida appear in two sections of this table.
[2] A neurological examination is also recommended.

Speech Impairments

Physician's evaluations for children with speech impairments are required or recommended by fifteen states. In slightly more than one-half of these states, a physician's evaluation is required for those children who exhibit voice disorders. Two states specify that the evaluation be done by an otolaryngologist and one state suggests that the child with speech handicaps be evaluated by an otologist, neurologist, laryngologist, or audiologist, when appropriate.

TABLE VI

Speech Impairments

An Evaluation by a Physician is Required in Instances of Voice Disorder	An Evaluation by a Physician is Recommended
Alaska	Alabama
Georgia[1]	Florida
Indiana[2]	Idaho
Louisiana	New York[3]
Mississippi	Ohio
New Mexico	Oregon
Ohio[1]	Pennsylvania
Washington	

[1] An evaluation by an otolaryngologist is required.
[2] Also for suspected acoustic, neurological or physiological conditions.
[3] Referrals to an otologist, neurologist, laryngologist and audiologist, as appropriate, are recommended.

Mental Retardation

P.L. 94-142 regulations utilize the American Association on Mental Deficiency (A.A.M.D.) definition of mental retardation. The regulations make no reference to levels of severity. Traditional educational practice has recognized three levels of retardation: educable, trainable, and profound, and this distinction still has currency in most states. A.A.M.D. employs the terms mild, moderate, severe, and profound to distinguish among levels of severity. Although the educational and A.A.M.D. terms are not precisely analogous, for the purposes of this report they have been combined.

Only five states require or recommend a physician's evaluation for all levels of retardation. In addition, two states recommend a physician's evaluation for those children with mild retardation, four states require it for children with moderate retardation (one state recommends an evaluation), and three states require an evaluation by a physician for children with severe or profound retardation. Overall, only twelve states require or recommend a physician's evaluation for children with retardation of any level of severity.

TABLE VII

Mental Retardation

An Evaluation by a Physician is Required

For all degrees of retardation:

California[1]
Hawaii[1]
New Mexico[2]
Oregon
Virginia

For mild or educable mental retardation:

North Carolina[1]
West Virginia[3]

For moderate or trainable mental retardation:

District of Columbia
Georgia
North Carolina
North Dakota
West Virginia[3]

For severe mental retardation:

Georgia
North Carolina
Pennsylvania

For profound mental retardation:

District of Columbia
Pennsylvania
Utah

[1] Evaluation is recommended, not required.

[2] Anticipated degree of restriction in the child's placement determines the need for evaluation.

[3] Evaluation may be performed by a physician or nurse.

Learning Disabilities

As noted in the discussion section of this report, the area of learning disabilities has been studied widely by physicians in recent years, an activity paralleled by education. It is significant to note, therefore, that only eight states require, and thirteen recommend, a physician's participation in the comprehensive evaluation process. These figures represent approximately 41% of the states. However, when a physician's examination is required or recommended, a neurological examination is included as a component of that process by ten states.

TABLE VIII

Learning Disabilities

An Evaluation by a Physician is Required

- Alaska[1]
- District of Columbia[1]
- New Jersey[1]
- Ohio[1]
- Pennsylvania[1]
- Texas
- Virginia
- Washington[1]

An Evaluation by a Physician is Recommended

- Arkansas[1]
- California
- Idaho
- Kansas
- Kentucky
- Louisiana
- Michigan[1]
- Mississippi[1]
- Montana
- North Carolina
- Oregon
- Rhode Island[1]
- West Virginia

[1] Includes a neurological examination.

Deaf-Blind and/or Multi-Handicaps

Although the deaf-blind and the multi-handicapped child are separately identified in P.L. 94-142, few states include both as discrete handicapping conditions in their regulations. There exists a tendency to include the multi-handicapped category more frequently than the deaf-blind as a handicapping condition requiring special education services.

The data presented in Table IX reflect only those states which indicate that these two categories require specialized services and, further, call for some physician involvement in evaluation. The regulations for these two categories which are operational in other states most often imply that the professional required for other categories of disability should be utilized if such a condition is present in a specific child being evaluated. Therefore, in a state which requires physician evaluation for the child with hearing impairment and for one with visual impairments, it is presumed that these physician services would be required for a child with a combination of these two disabilities. This cross-referenced analysis has not been included in Table IX.

TABLE IX

Deaf/Blind and/or Multi-Handicaps

An Evaluation by a Physician is Required

- Alabama[1]
- Arkansas
- District of Columbia
- Georgia[2]
- Indiana
- Kentucky
- Louisiana[2]
- Michigan[3]
- North Carolina[1]
- North Dakota
- Ohio
- Utah
- Virginia

[1] Includes an evaluation by an ophthalmologist or optometrist.

[2] For the Deaf/Blind child, Georgia and Louisiana require evaluations to be performed by an ophthalmologist and an otologist or audiologist.

[3] Suggested evaluators are: neurologist, orthopedic surgeon, ophthalmologist and otolaryngologist.

TABLE X

Physician Participation in the Evaluation of Children for Special Education

CATEGORY AND CONDITION	NUMBER OF STATES	PERCENT N. = 51
A. Physician's evaluation for all children suspected of needing special education:		
Require/Strongly Recommend	8	15.7
Recommend/Suggest	8	15.7
B. Physician's evaluation according to disability groups:		
Hearing Impairments		
Require	20	39.2
Recommend	12	23.5
Vision Impairments		
Require	11	21.6
Recommend	19	37.3
Physical and Health Impairments		
Require	35	68.6
Recommend	1	2.0
Emotional and/or Social Impairments		
Require	7	13.7
Recommend	22	43.1
Speech Impairments		
Require (voice disorder)	8	15.7
Recommend	7	13.7
Mental Retardation		
Require	9	17.6
Recommend	3	5.9
Learning Disabilities		
Require	8	15.7
Recommend	13	25.5

IV. CONCLUSIONS

The project's activities, upon which this report is based, have been a direct result of the premise that the physician is a critical participant in the educational experiences of handicapped children. This premise has been minimized or altogether rejected in the opinion of many members of the medical profession. They maintain that the evidence which supports their view is to be found in the regulations of P.L. 94-142 which describe the physician as providing little more than diagnostic services to special education. Although many areas of involvement have been proposed, it was felt that an examination of the current responsibilities assigned to the physician should be undertaken, delaying further consideration of roles to another time. The results of that investigation have revealed that it is in the area of student evaluation that the physician is most frequently identified as a participant. A review of state regulations determining the course of physician participation has resulted in the following conclusions:

1. The actual frequency with which a physician's examination is utilized as part of the evaluation process for special education is not consistent with P.L. 94-142 policy which includes "health" as one recommended area of assessment.

It is recognized that not all children with handicaps will have health needs that differ from the general population, and yet many children, especially those with sensory and developmental deficits, demonstrate clear medical implications. Additionally, those handicaps which involve behavioral or learning problems are frequently found to have some link to the child's health status, and may result in amelioration when given attention by a physician.

Arguments have been cited in the discussion section that the procedures are too costly and the physician's time too restricted to allow for a medical evaluation to be provided each child who is being considered for special education services. What has not been given adequate consideration are the advantages, in terms of time and cost, of developing an intermediate method or procedure to be administered by the physician which would provide more educationally relevant information than a screening, yet would be less extensive than a comprehensive medical examination. Such a procedure would be of use in evaluating those children who do not present readily identifiable medical conditions and/or whose behavioral and learning problems respond well to accepted educational practices.

At present, only 35% of the states consider a medical evaluation by a physician to be of sufficient importance to require or recommend that it be part of the evaluation process for all children suspected of needing special education. No state provides a guarantee that each child, upon being considered for special education services, would be seen by a physician for evaluation. Even the most comprehensive regulations are too broad to allow for an interpretation by a local school district which would circumvent such an evaluation.

2. When state regulations indicate the need for a physician's participation in the evaluation of handicapped children, it is most often a categorically based examination by a specialist.

Only two states, Maryland and Massachusetts, base their recommendations for physician input in the child's evaluation solely on non-categorical need. All other states, even those which have general recommendations for physician's involvement, provide some form of categorical framework which determines the type and frequency of physician input. This tendency to link physician participation with disability implies that there exists a desire on the part of state education agencies to have the child certified as being eligible for special education services by virtue of belonging to a particular disability group, rather than seeking to discover any instructionally relevant information through a physician's evaluation.

In the discussion section of this report, it was postulated that there is a predictable juxtaposition of physician specialist to disability group. This view was upheld in the review of state regulations according to handicapping category. In only four instances (Alabama, Hawaii, North Carolina, West Virginia) was there a cross-over of specialist utilization, breaking the pattern of disability/specialist linkage. In these states, it is recommended that the child with hearing impairments receive an evaluation by an ophthalmologist or optometrist. In all other instances, the specialist, when indicated, was cited in the context of the disability most frequently associated with that professional's area of training.

Mention of the use of the child's family or primary care physician as a resource in evaluation was made in only four states and the use of a pediatrician as a preferred member of an interdisciplinary team was made by only one state. These data support the proposition that the education agencies overly rely on specialists for obtaining medical input and, thereby, fail to take advantage of the unique knowledge of child and family possessed by the primary physician. The focus on the training of both student and practicing physician in the techniques of evaluating and managing handicapped children will greatly enhance the primary physician's role in interdisciplinary team functioning. Increased competencies on the part of the primary physician will make it even more important for the education agencies to seek input from this source.

3. The language and terminology used by the states to describe the physician's participation in the evaluation process is vague and imprecise.

In the process of preparing the data derived from a review of state regulations, it was necessary to establish a number of assumptions. This necessity arose from the great variability among states in the use of terminology to describe the physician's role in the evaluation process.

In an attempt to discern a common understanding of such procedures as "medical evaluation," "medical report," and "medical certificate of handicap" at the state level, the states were asked to provide their official definition of each of these terms (or to provide their terms and definitions if their usage were different) on the survey form. Some states offered no definitions, and those that did describe their definitions did so subjectively, and not by reporting the state's official definitions.

Upon examining the regulations, it was found that only six states provided a definition of the factors which should be present in a medical evaluation. These definitions, however, vary greatly in detail and clarity. Additionally, eight states were found to provide some general instructions as to information that should be included in the physician's report to the interdisciplinary team. Such information usually includes the following: summary of findings, medical restrictions as to placement, and recommendations. These guidelines appeared as part of the regulations which applied to specific handicaps and were not necessarily constant or similar throughout the categories even within the same state.

Three states (Massachusetts, New Jersey, and Louisiana) supplement their definitions by providing a form to be completed by the physician who conducts the general physical examination. Forms are also provided by Oklahoma and Wisconsin for physicians' reports on physically impaired children and by South Carolina for reports on orthopedically handicapped and visually impaired children. In general, these forms consist of a series of items which assist the physician in formulating his/her report in educationally relevant terms, and allow for a better understanding of the physician's report on the part of the non-medical team members.

The failure to provide precise descriptions of medical evaluations is not the sole responsibility of the education agencies. Beyond generally accepted examination procedures, there are no widely accepted and commonly utilized guidelines for a physician's developmental or school-related examination. For the most part, physicians tend to depend upon experience in including or excluding tests and procedures in examining a handicapped child. Moreover, there does not exist, in medicine, precise definition of "reports," "statements," or "certification." Presumably, reports and certificates are based upon evaluative data, yet whether these terms are synonomous or, rather, connote levels of thoroughness of examination, is open to debate.

Agreement on definition of procedures is difficult to obtain. It is possible, however, for states to detail with greater specificity the types of medical information which would be useful for special education programming. Further, medical associations and societies can be influential in establishing guidelines for conducting medical evaluations of handicapped children and in urging the adoption of standardized forms for the reporting of their findings in a fashion most useful for educational purposes.

Senator STAFFORD. The next panel consists of Mr. Aubrey W. Fillbrandt, principal, Winfair School, elementary director, Windom Elementary Schools, Windom, Minn., representing the American Corrective Therapy Association; James Foshee, Ph. D., assistant commissioner for mental retardation, Nashville, Tenn., representing the National Association of State Mental Retardation Program Directors; and Ms. Lana Ford, regional occupational therapist, assistant professor, occupational therapy curriculum, Medical College of Virginia, Virginia Commonwealth University, Richmond, Va., representing the American Occupation Therapy Association, Inc.

I am grateful that our panel is represented by two most distinguished Senators, my colleague and friend, Senator Boschwitz, to present to the committee the member of the panel from his State.

STATEMENT OF HON. RUDY BOSCHWITZ, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator BOSCHWITZ. I would like to say a few words about Aubrey Fillbrandt. Aubrey and I have known one another through the political wars. I got to know him 10 years ago and to know of his interest in education, particularly of children who have severe disabilities. As a matter of fact, for years he was principal of Winfair School, which is in a town of about 4,000, am I correct, in south-central Minnesota?

Senator STAFFORD. That would be a city in Vermont.

Senator BOSCHWITZ. And indeed Aubrey has made many contributions in the area of rehabilitation of children in our State who have profoundly severe retardation or multiple handicaps. So he comes very well qualified. He and I started to correspond about these matters shortly after I came to the Senate, and I suggested at that time, a year ago, Mr. Chairman, that when we do have hearings, that he come and testify. So it is with great pride that I introduce him to the committee, and I know, knowing the senior Senator from Vermont, that you will listen to his testimony carefully and learn from it and, indeed, this man has a great deal to offer.

Senator STAFFORD. Thank you very much, Senator Boschwitz, for that presentation of your distinguished constituent. Very happy to have all three of you here on the panel. And, as usual, the Chair will ask you to summarize your statements, place your full statements in the record, and if we have questions in the committee, we will submit them to you in writing, and responses in writing if that is agreeable. Whatever precedent you wish, and who speaks first, we will leave to you three to determine.

STATEMENTS OF AUBREY W. FILLBRANDT, PRINCIPAL, WINFAIR SCHOOL, ELEMENTARY DIRECTOR OF ELEMENTARY SCHOOLS, WINDOM, MINN., REPRESENTING AMERICAN CORRECTIVE THERAPY ASSOCIATION; JAMES G. FOSHEE, PH. D., ASSISTANT COMMISSIONER FOR MENTAL RETARDATION, TENNESSEE DEPARTMENT OF MENTAL HEALTH/MENTAL RETARDATION, REPRESENTING THE NATIONAL STATE MENTAL RETARDATION PROGRAM DIRECTORS, INC.; LANA FORD, REGIONAL OCCUPATIONAL THERAPIST, ASSISTANT PROFESSOR, OCCUPATIONAL THERAPY CURRICULUM, MEDICAL COLLEGE OF VIRGINIA, VIRGINIA COMMONWEALTH UNIVERSITY, RICHMOND, VA., REPRESENTING THE AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, INC., A PANEL

Mr. FILLBRANDT. I suspect that since the Senator took the time to introduce me, I should go in this order and begin this process.

I appreciate your coming, Senator Boschwitz, and I appreciate the opportunity on my behalf to have this chance to talk to the subcommittee.

It says in the programing that I represent the American Corrective Therapy Association. I am hopeful that I am here representing severely/profoundly retarded multiple handicapped children in this presentation today.

I have heard quite a few biases this morning and I guess I could spend quite a bit of time responding to some of those but I will get on with my primary purpose in being here.

I would start by making a statement in reference to related services. I think what applies here is that which governs least governs best.

The reason for that is in Hatton, N. Dak., and in Washington, D.C., we have such different people available to provide services, and there are a lot of different professions that can be helpful to children so I think to tie down specific kinds of services would be a catastrophe for the small cities, small towns throughout the Nation.

OK. To get on with my presentation, and I am hopeful that you would enter the written testimony as you indicated you would.

Senator STAFFORD. We will place your full statement and those of your fellow panelists in the record as if read.

Mr. FILLBRANDT. OK.

Those of you who have a copy of my written testimony, let me bring your attention to the first page. It is the summary page, item No. 4. I am really here to "recommend that the standards set forth by the American Corrective Therapy Association for certification in Corrective Therapy be included in the body of Public Law 94-142." I am not suggesting that this be a specific service that must be provided, but could be used if available, with reimbursement.

What I am suggesting is the mere mention of it in the law would be helpful to State departments, educators, principals, et cetera. Let me tell you where I am coming from.

I have worked with special education children for a long time. But, 5 years ago, we would go out to the day activity center, preferably, and with a novice, nontenured psychologist, we would pick out the boys with dark hair and crew cuts. If he did not wet his pants and spill soup no more than once a year and could speak three languages, we would say you may come to our trainable program. So, since that time, I have come a tremendous way in becoming an advocate, particularly in reference to today, for the retarded multihandicapped children. These 42 children have been in my school for the last few years, and I have seen remarkable progress, which I will allude to later.

Back to the written document. If you will turn to the last page, please, and what I am really saying here is that in section 121a.14(b)(2)(ii), what I am recommending is that you "add corrective therapy between adapted physical education and movement education. The amended section would therefore read, 'The term includes special physical education, adapted physical education, corrective therapy, movement education, and motor development.' "

In other words, it is just a specific term to bring to the attention of people throughout the Nation that, yes, this is a service that can be helpful to multiple handicapped children. It is not suggested that schools must use this service but it would be a helpful service, particularly for severely profounded retarded. As you go through the documents you will find that for the training of these handicapped, corrective therapists have much to offer them. Corrective therapy really goes back to about 1946, assisting with the rehabilitation of veterans throughout the Nation, and it is not until recent times when severely profoundly retarded children have been coming to the public school, that they have gotten into this area because many of the same kinds of problems exist for these children as exist for the veteran who is needed to be rehabilitated.

The children population that I am talking about, the 42 that attend Winfair School, are very, very handicapped children. Half cannot talk, cannot walk, cannot feed themselves, do not have good receptive language, are not trained, so we are talking here about a very, very handicapped child. The tremendous success that the corrective therapist has been in our program is mentioned on page 2 where 137 of the 253 goals that we had for these children this past year were on gross motor kinds of goals and our corrective therapist, Sandra Dekock, who was a fantastic person in addition to her professional training, was involved with, as you can see, over half of the goals for these children—and to give you some specific examples of how these children have been helped, I would like to mention three children in our program with reference to where they were when they came to our program and where they are today.

Right now there are two States in the United States who, through related services in their regulations, acknowledge corrective therapy, and that is Texas, very recently, and the State of

Minnesota. Minnesota has been using the services of corrective therapy as a related service for a number of years.

OK. Child A. When child A began school at Winfair, he could maintain a sitting position without head supports for 3 seconds. I will not go through all of the goals that have been covered in those 3 years, but I could respond to those if it would be important. His current status is, he sits independently in any type of chair. He has established a good reciprocal pattern of creeping which is his primary means of ambulation, and he is able to hold himself erect in the parallel bars for several minutes. Tremendous progress for this young child. He was to see an orthopedist this morning to increase stability in his lower extremities and greater training will be initiated in the fall. Strength and endurance are important in progress for walking.

Child B entered the program in Winfair and she was classified as a fragile ambulator and her wheelchair was a primary motivator from one place to another. She has precarious standing balance. Currently she can walk independent for 2 to 300 feet. Her balance continues to improve. However, it still needs a great deal of practice. Her future goals at Winfair are improving protective extension and more balanced activities.

Child C was able to stand with supports and walk with maximum assistance. His creeping pattern was a lateral pattern which is bunny hopping, his muscle tone was hypotonic. Child C is presently an independent ambulator with functioning balance skills. His creeping is improved to where he uses a reciprocal pattern almost exclusively. He has made substantial progress in balance.

Not only have these children been helped tremendously through this corrective therapist, but it is very important that there be continued efforts on the part of our therapists to help this type of child.

I certainly appreciated being here.

[The prepared statement of Mr. Fillbrandt along with questions and answers follow:]

TESTIMONY ON
HANDICAPPED CHILDREN ACT OF 1975

Presented to

SENATE SUBCOMMITTEE ON THE HANDICAPPED
HON. JENNINGS RANDOLPH, CHM.

Oversight hearing on the implementation
of the Education for All Handicapped Children
Act of 1975 (Public Law 94-142)

July 31, 1980

by

Mr. Aubrey W. Fillbrandt, Principal-Winfair School
& Elementary Director of the Windom, Mn
Elementary Schools

SUMMARY OF TESTIMONY ON HANDICAPPED CHILDREN ACT OF 1975 (PUBLIC LAW 94-142)

by

AUBREY W. FILLBRANDT, WINDOM, MN

1. I have been a school administrator in the State of Minnesota for the past nineteen years serving children. This service includes working with children getting Special Education assistance of one kind or another.

2. For the past three years our elementary school has also included forty-two Severely/Profoundly Retarded-Multiple Handicapped children and young adults.

3. We have employed a Corrective Therapist the past three years to direct our Adapted Physical Education Program and to direct the personal physical development of our pupils. Our therapist has been the most single influential factor in our having a successful educational program. More than 50% of our Individual Education Plans were developed, implemented or supervised by the Corrective Therapist this past year.

4. I recommend that the standards set forth by the American Corrective Therapy Association for certification in Corrective Therapy be included in the body of Public Law 94-142.

5. The following Appendixes will be found at the end of this written testimony:

   Appendix A - "Recommended Minimum Standards for Approved Clinical Training Affiliations"

   Appendix B - "Requirements for Certification in Corrective Therapy"

   Appendix C - "Position Paper - Corrective Therapy Services to Handicapped Children"

My name is Mr. Aubrey W. Fillbrandt, Principal of Winfair School and Elementary Director of the Windom Mn Public Schools.

I have helped to provide special education services for children as a school administrator for the past nineteen years in the State of Minnesota.

Presently, the Windom, Mn Schools provide various special education services for seven surrounding school districts.

For the past three years I have administered a program in the Windom Schools for Severely/Profoundly Retarded-Multiple Handicapped. These forty-two children and young adults live in a community (privately owned) residential facility and are bussed to school daily during the regular school year and for four hours a day during summer school which last six weeks.

I would like to focus my testimony on "meeting the physical development and physical education needs of handicapped children and young adults" in the public school setting.

We have had a full time Corrective Therapist on our staff for the three years we have been serving Severely/Profoundly Retarded-Multiple Handicapped in our public school setting.

The need for our Corrective Therapist to direct our Adapted Physical Education Program and to direct the personal physical development of our pupils is well documented in the Individual Education Plans that have been devloped for our pupils from the

"Home for Creative Living" these past three years. This past year there were 253 goals written and 137 of these goals were gross motor goals.

Some of these goals were as follows:

A. Initiating transfer skills for the wheelchair
B. Increase head control
C. Increase weight bearing on arms
D. Increase or maintain range of motions
E. Increase head and trunk control
F. Improve reaching skills
G. Increase rolling skills
H. Increase positive resonses to vestibular stimulation
I. Improve static balance
J. Strengthen appropriate reflexes
K. Increase relaxation
L. Increase sitting balance
M. Increase mobility
N. Improve gait pattern
O. Increase muscular strength and coordination
P. Improve hand-eye coordination, and
Q. Increase skills leading to independent ambulation.

More than 50% of the Individual Education Plans were developed, implemented or supervised by the Corrective Therapist. Without an adequately trained individual, much of the appropriate education would not have been implemented or even identified.

A recently published study by Aloia, Knutson, Minner and Von Seggern reported that physical education teachers indicated their training, experience and abilities were significantly lower in regards to the physically handicapped child.[8] They believe that this response could be the result of general lack of exposure to the physically handicapped child in the regular physical education class.

The American Corrective Therapy Association has a unique history of providing physical education services to our country's veterans through the medical community of the Veterans Administration. Corrective Therapists have been employed primarily in the Veterans Administration Hospitals until recent years when there has been a shift in the employment trend towards the public school system.

Much of the demand for Corrective Therapy services has been realized with the advent of Public Law 94-142 which provided the funding to equalize education opportunities for the handicapped student.

Corrective Therapists were getting scattered recognition throughout the nation from special educators in the early seventies as motor education became a more prominient emphasis in the curriculum of the special education population.

The need for specialized physical education services was augmented when public school systems became aware of the student with multiple handicaps, including severe and profound mental retardation. A major misunderstanding that needed to be bridged by many corrective therapy students wishing to enter the educational field was explaining their background as physical education majors. Often times a physical education degree did not guarantee certification as an educator in a particular state. This has been a burden to the involvement and recognition of Corrective Therapists as qualified adapted physical educators throughout the fifty states.

It is part of my resolve here today to recommend that the standards set forth by the American Corrective Therapy Association for certification in Corrective Therapy be included in the body of Public Law 94-142.

The current terms cited in Section 121a. 14 (b) (2) (ii), special physical education, adapted physical education, movement education and motor development lack uniform interpretation for professional preparation and have an arbitrary value for expected outcomes. Inclusion of corrective therapy in this Section would establish a reference to a uniform standard for professional preparation and performance competency for physical education services to the handicapped.

Administrators in school systems, state department personnel and compliance officers need to be familiar with Corrective Therapy and what it has to offer the more severely handicapped populations in the public school system. Without this proper reference, the mandated physical education services will continue to be misunderstood and not properly acknowledged. It is my belief that it is in the national interest in implementing 94-142 that a discipline such as Corrective Therapy be recognized for its contribution to the health and educational field and that we capitalize on this experience for our school age population.

* Alois, Gregory F., Knutson, Richard, Minner Sam H., Von Seggern, Mary.

"Physical Education Teachers' Initial Perceptions of Handicapped Children." Mental Retardation, Vol 18 No. 2, (Apr. 1980), pp. 85-87

APPENDIX A - "Recommended Minimum Standards for Approved Clinical Training Affiliations" - American Corrective Therapy Association, Inc.

APPENDIX B - "Requirements for Certification in Corrective Therapy" - American Corrective Therapy Association, Inc.

APPENDIX C - "Position Paper - Corrective Therapy Services To Handicapped Children," (Adopted-July, 1979) - American Corrective Therapy Association, Inc.

AMERICAN CORRECTIVE THERAPY ASSOCIATION, INC.

recommended minimum standards for approved clinical training affiliations

RECOMMENDED MINIMUM STANDARDS FOR APPROVED CLINICAL TRAINING AFFILIATIONS

PURPOSE:

To provide hospital and school affiliated experiences for the trainee in Corrective Therapy and/or Adapted Physical Education which are adequate to supplement his prior or concurrent didactic instruction within the educational institution.

TYPES OF TRAINING:

Lectures -- theory, ethics, orientation, disability discussion
Medical prescriptions and terminology
Treatment demonstration -- techniques, modalities, equipment
Professional meetings and consultation
Observation of treatment and its organization
Supervised clinical practice -- corrective, developmental, habilitative
Administration -- treatment planning, recording, progression, reporting, clinic management
Laboratory and research experience

MINIMAL TRAINING REQUIREMENTS IN SPECIFIC AREAS: (at least 400 hours total)

Introduction -- (20 hours)

Orientation -- hospital or school, nursing service, medical guidance, vocational and social services, special application to the physically handicapped or retarded child.

Function of each Phys. Med. & Rehab. or Health Dept. service.

History, philosophy and scope of Corrective Therapy and Adapted Physical Education.

Mission of corrective program concerned -- areas and disabilities served, coordination with other health services, immediate and longer-range goals.

Administrative procedures, ethics and professional advancement.

Orthopedics -- (80 hours)

Diagnoses and disabilities (applicable to all areas).

Evaluation of strength, endurance, contraindications, range of motion.

Exercise routines -- active, selected muscle setting, progressive resistance, postural, isotonic and isometric, practice in affected activities of daily living.

Ambulation techniques -- non-weight-bearing, partial to full weight-bearing, use of prostheses, crutches, canes and walkers.

Proper body mechanics -- safe, effective lifting and handling of patients or other loads.

Bracing -- corrective, supportive, functional.

Neurological -- (80 hours)

Evaluation of paralysis, spasticity, ROM, coordination, ADL skills, work and pain tolerance.

Exercise -- passive, assistive, active, reciprocal, stretching, relaxing, toning and PRE.

Bracing -- body jackets and supports, full-length leg braces, below-knee bracing.

Ambulation or other locomotion -- use of wheelchair, balance and weight bearing, walking aids.

ADL training, with adaptive devices if needed -- mobility, dressing, feeding, hygiene, transfer activities.

Neuro-Psychiatric -- (60 hours)

Diagnoses and symptoms -- psychosis, psychoneurosis, psychomatic and personality disorders.

Evaluation of behavior patterns, individual or group, and attitude toward self, instructor and activity.

Treatment objectives -- acceptable expression of aggressions, relief of guilt feelings, narcissistic gratification, arousal of interest, resocialization and physical conditioning.

Treatment activities -- individual and group prescription, purposeful exercise, rhythms, games and sports, drama, arts and other socially acceptable action.

Role of therapist in observing symptoms and results -- levels of achievement, motivation, adaptability to readjustment, socialization progress and physical well-being.

General Rehabilitation -- (60 hours)

Paraplegia and quadriplegia -- passive to active exercise, stretching, PRE, mat program, ROM, relaxing spasticity, bracing, ADL training.

Amputees -- stump shaping and conditioning, prosthesis fitting, ambulation and gait training for lower-extremity amputation, muscle control and ADL function for upper-extremity amputation, care and adjustment of prosthesis.

Cardiac and general medical -- disability and prognosis evaluation, graduated exercise routines, checking of vital signs.

Special Categories -- (60 hours)

Blind -- orientation to situation and surroundings, ambulation with cane and/or dog, ADL and occupational training.

Mentally retarded and emotionally disturbed -- disability and prognosis evaluation, ADL and educational training, conditioning exercise and adapted sports.

The multiply-handicapped -- diagnosis and evaluation of disabilities, muscle-toning and re-education, balance and locomotion training, functional self-care, individual and group activities.

Developmental and Adapted Physical Education -- (60 hours)

Diagnosis and evaluation of the atypical child -- medical guidance, comparison normal, tests and measurements.

Prevention of poor health habits -- hygiene, nourishment, rest, elimination.

Functional development -- physiological and psychological.

Recovery from disability -- remedial, compensatory, assistive.

Adapted growth activities -- corrective exercise, socialization, adapted games and sports.

Habilitation with handicaps -- utilizing personal resources, whether physically handicapped or retarded child.

Maintenance of vital capacities -- respiration, circulation, strength, coordination, stamina.

Rehabilitation to fitness for living -- maximum possible return, substitution for residual disability, mechanical and emotional aids.

AMERICAN CORRECTIVE THERAPY ASSOCIATION, INC.

Requirements for Certification in Corrective Therapy

1. To be eligible for certification by the A.C.T.A., candidates shall have completed their training in a college or university accredited by the A.C.T.A.
2. The candidate shall be an Active or Student member of the American Corrective Therapy Association, Inc.
3. The candidate shall have a baccalaureate or advanced degree in Physical Education or Corrective Therapy.
4. The candidate shall provide evidence of successfully completing 400 hours of clinical training in Corrective Therapy from an A.C.T.A. approved training site.
5. The candidate shall show by their official transcript(s) that they have successfully completed the minimum number of credits in each category listed below, and all required courses in each category marked by an asterisk (*).

Didactic curriculum and academic categories, with asterisks indicating required courses.

APPLIED SCIENCES

* Anatomy * Kinesiology * Physiology * Physiology of Exercise Growth & Development Neuroanatomy * Neurology * Pathology	12 Semester Units or 18 Quarter Credits

PSYCHOLOGY

* General Psychology * Abnormal Psychology * Physiological Psychology Developmental Psychology Mental Health Psychotherapy Social Psychology	6 Semester Units or 9 Quarter Credits

HEALTH & PHYSICAL EDUCATION

* Analysis of Human Movement * Health Education and Problems * Principles of Health and Physical Education * Physical and Mental Habilitation * Tests and Measurements Evaluation of Health and Physical Education Research in Health and Physical Education * Skills and Applied Techniques	16 Semester Units or 24 Quarter Credits

CORRECTIVE THERAPY & ADAPTED PHYSICAL EDUCATION

* Physical Education for Atypical * Organizational and Administrational Corrective Therapy * Kinesiotherapy Recreation in Rehabilitation Intertherapy Relations Evaluation and Research Applied to * Corrective and Adapted Programs	8 Semester Units or 12 Quarter Credits

JRM 2-14-80

POSITION PAPER
CORRECTIVE THERAPY SERVICES TO HANDICAPPED CHILDREN
(Adopted July 1979)

The American Corrective Therapy Association strongly advocates that services of Certified Corrective Therapists be made available to children with handicap conditions under the mandates of Public Law 94-142 (Education of Handicapped Children), Section 121a.307 Physical Education, Sub-section (c.) Special Physical Education. Presently, this part of the law does not identify any standard that qualifies Special Physical Education. As a result, this term lacks substance and is subject to wide disparity of understanding and interpretation of which most inherently is the lack of awareness of the skills of a qualified practitioner in physical education.

The American Corrective Therapy Association supports the concept of adapted physical education as the appropriate profession to meet the physical and motor education needs of children with handicaps in the academic environment. Certified Corrective Therapists with the accompanying teaching credentials are highly qualified in the instruction and application of physical and motor skill development. The Certified Corrective Therapist is a physical education major from an accredited institution who has successfully passed a competency based examination in the assessed areas of therapeutic exercise, adapted games and sports, neurology, pathology, behavior and habilitation/rehabilitation techniques.

The Certified Corrective Therapist is capable of the following functions: 1) identifying pathologies in neuro-motor function, postural and orthopedic defects, perceptual/motor dysfunction, and deficiencies in movement and physical fitness. 2) Motor assessment. 3) Physical fitness testing. 4) Developing, implementing and evaluating program objectives. 5) Purchase and instruction in the use of special designed equipment. 6) Promote interpersonal and social skills through group function. 7) Provide liaison function with related services. 8) Provide inservice education to regular physical education program in order to promote the least restrictive alternatives. 9) Provide council and instruction to parents to enhance the effect of the services to the child.

Therefore, based on the intent of the rule and its obvious weakness combined with a solution that seeks to promote a standard to assure quality service and which does not seek to prevent any related services, the American Corrective Therapy Association offers the following amendment for Corrective Therapy's inclusion as an available mandated service to promote the intent and compliance with P.L. 94-142 Section 121a.307 (c).

Section 121a.14 (b) (2) (ii)

Add "Corrective Therapy" between adapted physical education and movement education.

The amended section would therefore read, "The term includes special physical education, adapted physical education, corrective therapy, movement education, and motor development."

WINDOM PUBLIC SCHOOLS
H. J. Bartel, Superintendent of Schools
Windom, Minnesota 56101

ELEMENTARY DIVISION
Aubrey Fillbrandt, Elementary Director

WINFAIR SCHOOL
1484-8th Avenue
Aubrey Fillbrandt, Principal
Susan Harries, Assistant to the Principal

HIGHLAND SCHOOL
60 - 10th Street
Robert Carlson, Building Principal

AUG 25 1980

August 14, 1980

8-25-80

[illegible] ON
The Handicapped

Hon. Senator Jennings Randolph
Chairman
Subcommittee on the Handicapped
Room 4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

Thank you so very much for the opportunity to present testimony at the July 31st oversight hearing on Public Law 94-142.

I certainly enjoyed the opportunity and I'm hopeful that it will be of assistance to you in future deliberations.

I'm enclosing responses to questions which you sent me following the hearing.

Respectfully yours,

Aubrey Fillbrandt

Aubrey Fillbrandt

AF/ja

enc: 1. Responses to Questions
2. Draft Postion Paper for Spec. Educ.

WINDOM PUBLIC SCHOOLS
H. J. Bartel, Superintendent of Schools
Windom, Minnesota 56101

ELEMENTARY DIVISION
Aubrey Fillbrandt, Elementary Director

WINFAIR SCHOOL
1400-8th Avenue
Aubrey Fillbrandt, Principal
Susan Harries, Assistant to the Principal

HIGHLAND SCHOOL
60 - 10th Street
Robert Carlson, Building Principal

August 14, 1980

RESPONSES TO QUESTIONS PRESENTED TO MR. AUBREY FILLBRANDT
BY SENATOR JENNINGS RANDOLPH, CHAIRMAN- SUBCOMMITTEE ON THE HANDICAPPED

Re: July 31, 1980 Testimony

Q - Question
A - Answer

1. Q. Have you documented the progress of your handicapped students participating in the corrective therapy program?

   A. Yes, the assessment, activity, progress and achievement has been documented with each child the corrective therapist has worked with in the past three years.

   The Individual Education Plans are written annually and are reviewed twice each year. The motor and physical educational goals are implemented by the corrective therapist. This is either through direct service or on a consultive basis.

   The corrective therapist is involved in the consultation on procedure and methodology in implementing the assigned goals and in periodic re-assessment of those goals with the classroom teacher.

   Q. Are you aware of any studies that document the effectiveness of corrective therapy?

   A. Yes, the Minnesota Department of Education and Office of Physical Education did a joint study on Corrective Therapy and developed a position paper on developmental/adapted physical education services, which included Corrective Therapy, for the purpose of defining needed service and eligibility for State Special Education Aid. (I'm enclosing a copy of this Draft Position Paper)

-2-

2. Q. Does your corrective therapist do an assessment of his/her students prior to initiating a program for the student?

A. Definitely!!

The Corrective Therapist at the Windom Public Schools uses a preliminary assessment form for tests on gross motor and reflex development and also uses the time motor file assessment tool.

The Corrective Therapist is not limited to any one assessment tool because the range and uniqueness of the disability often dictate the most suitable assessment tool (or a portion of) consistent with program need and goals.

I'm enclosing some samples of the assessment tools our corrective therapist uses:

"Sensorimotor Integration Program"

"Posture Score Sheet"

"Sensorimotor Integration Program Checklists"

Other developmental assessments (or parts of) we utilize include:

"Gross Motor and Reflex Development"
T. Hoskins and J. Squire
Journal of the American Physical
Therapy Association 1973
#53, 118-120.

"Purdue Perceptual -Motor Survey"
Achievement Center for Children
Purdue University -Lafayette, Indiana

Aubrey Fillbrandt, Prin.
Winfair School
Windom, Mn 56101

SENSORIMOTOR INTEGRATION PROGRAM

PRELIMINARY ASSESSMENT FORMS

Patricia Montgomery, RPT
Eileen Richter, OTR

Published by

WPS

A DIVISION OF MANSON WESTERN CORPORATION

NAME: ______________________________

DATE: ______________________________

BIRTHDATE: ______________________________

EVALUATOR: ______________________________

SUMMARY OF RESULTS

Sensorimotor History:

Reflex Integration Test:

Fine Motor Development Test:

W-142 B

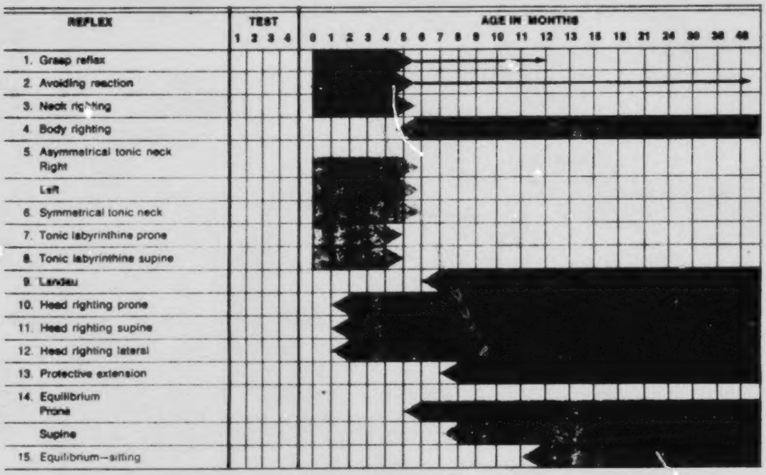
Copyright © 1977 by WESTERN PSYCHOLOGICAL SERVICES
Not to be reproduced in whole or part without written permission of copyright owner.
All rights reserved. 1 2 3 4 5 6 7 8 9 Printed in U.S.A.

REFLEX INTEGRATION TEST

In the upper table, circle whether each reflex is present (P), absent (A) or intermediate (F) according to the criteria given on the instruction sheet accompanying this form.

The lower table shows the normal period of occurrence for each reflex. The columns represent different chronological ages as labelled and the normal ages for each reflex are shaded. If desired, enter a check in one test column for each normal response.

REFLEX	Date: ABNORMAL		Age: NORMAL	Date: ABNORMAL		Age: NORMAL
Grasp reflex	P		A	P		A
Avoiding reaction	P	F	A	P	F	A
Neck righting	P	F	A	P	F	A
Body righting	A	F	P	A	F	P
Asymmetrical tonic neck						
Left	P	F	A	P	F	A
Right	P	F	A	P	F	A
Symmetrical tonic neck	P	F	A	P	F	A
Tonic labyrinthine prone	P	F	A	P	F	A
Tonic labyrinthine supine	P	F	A	P	F	A
Landau	P		A	P		A
Prone head righting	A	F	P	A	F	P
Supine head righting	A	F	P	A	F	P
Lateral head righting	A	F	P	A	F	P
Protective extension	A	F	P	A	F	P
Equilibrium						
Supine	A	F	P	A	F	P
Prone	A	F	P	A	F	P
Sitting	A	F	P	A	F	P



FINE MOTOR DEVELOPMENT TEST

Test items are arranged in order vertically, and age level norms are indicated by shading in the appropriate age columns. Four test columns are provided for an initial testing and three retestings. Instructions for each test activity are presented in the instruction sheet.

Place a check in the appropriate column by each activity the child performs according to the directions on the instruction sheet. Do not give credit unless an item is fully present. The child's motor age is the most advanced age at which he or she can perform at least 50% of the items.

A fine motor quotient (FMQ) may be determined for each child on voluntary activities.

$$\text{Fine motor quotient} = \frac{\text{Motor Age}}{\text{Chronological age}}$$

If 50% of the items for 48 months are present, the quotient may be computed. If all items are present and the child is older than 48 months, the MFQ is not applicable. It may not be appropriate to determine a fine motor quotient for older children who have developed splinter skills and can perform some of the higher items adequately, but who demonstrate inadequate responses at lower levels.

ACTIVITY	TESTS				AGE IN MONTHS																				
	1	2	3	4	0	1	2	3	4	5	6	7	8	9	10	11	12	13	15	18	21	24	30	36	48
1. Both hands fisted					■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
2. Mass motor activity reaction					■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
3. Hands open								■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
4. Plays regarding hands								■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
5. Bears weight on forearms								■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
6. Brings hands together									■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
7. Brings hands and objects to mouth									■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
8. Primitive squeeze										■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
9. Pronated reach											■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
10. Excessive grip strength											■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
11. Squeeze grasp											■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
12. Bilateral circuitous reach											■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
13. Unilateral reach												■	■	■	■	■	■	■	■	■	■	■	■	■	■
14. Palmar grasp												■	■	■	■	■	■	■	■	■	■	■	■	■	■
15. Transfers												■	■	■	■	■	■	■	■	■	■	■	■	■	■
16. Superior palmar grasp													■	■	■	■	■	■	■	■	■	■	■	■	■
17. Some voluntary release														■	■	■	■	■	■	■	■	■	■	■	■
18. Inferior pincer grasp																■	■	■	■	■	■	■	■	■	■
19. Radial digital pincer grasp																■	■	■	■	■	■	■	■	■	■
20. Hits two blocks together																■	■	■	■	■	■	■	■	■	■
21. Picks up pellet																■	■	■	■	■	■	■	■	■	■
22. Puts cube in cup																	■	■	■	■	■	■	■	■	■
23. Forefinger pinch																	■	■	■	■	■	■	■	■	■
24. Begins scribbling																	■	■	■	■	■	■	■	■	■
25. Stacks 3-4 blocks																			■	■	■	■	■	■	■
26. Puts pellet in bottle																			■	■	■	■	■	■	■
27. Dumps pellet out																			■	■	■	■	■	■	■
28. Turns door knob																						■	■	■	■
29. Makes tower of 6-7 blocks																						■	■	■	■
30. Overgrasps & overreleases																						■	■	■	■
31. Imitates vertical stroke																						■	■	■	■
32. Imitates circular stroke																						■	■	■	■
33. Tower of 9-10 blocks																								■	■
34. Copies circle																								■	■
35. Shifts hand dominance																								■	■
36. Imitates cross																								■	■
37. Feeds self well																								■	■
38. Unbuttons																								■	■
39. Throws and catches large ball																								■	■
40. Uses scissors																								■	■
41. Bounces ball awkwardly																									■
42. Copies square																									■
43. Draws triangle																									■

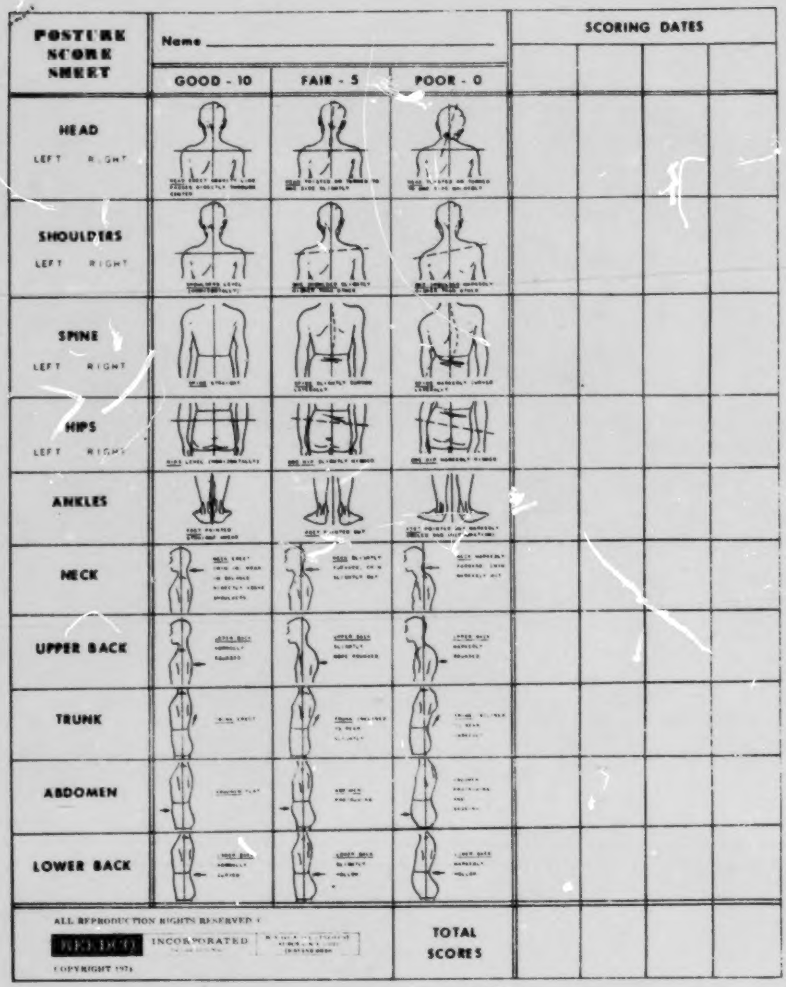
SENSORIMOTOR HISTORY*

Place a check in the appropriate column. Items marked "yes" may indicate sensorimotor problems.

	QUESTIONS	NO	YES	COMMENTS
TACTILE SENSATION	Does the child:			
	1) Object to being touched?			
	2) Dislike being cuddled?			
	3) Seem irritable when held?			
	4) Prefer to touch rather than be touched?			
	5) React negatively to the feel of new clothes?			
	6) Dislike having hair and/or face washed?			
	7) Prefer certain textures of clothing?			
	8) Avoid certain textures of food?			
	9) Isolate self from other children?			
	10) Frequently bump and push other children?			
AUDITORY SENSATION	Does the child:			
	1) Seem overly sensitive to sound?			
	2) Miss some sounds?			
	3) Seem confused about the direction of sounds?			
	4) Like to make loud noises?			
	5) Have a diagnosed hearing loss?			
OLFACTORY SENSATION	Does the child:			
	1) Explore the environment with smell?			
	2) Discriminate odors?			
	3) React defensively to smell?			
	4) Ignore noxious odors?			
VISUAL SENSATION	Does the child:			
	1) Have a diagnosed visual defect?			
	2) Have difficulty eye-tracking?			
	3) Make reversals when copying?			
	4) Have difficulty discriminating colors, shapes?			
	5) Appear sensitive to light?			
	6) Resist having vision occluded?			
	7) Become excited when confronted with variety of visual stimuli?			
GUSTATORY SENSATION	Does the child:			
	1) Act as though all food tastes the same?			
	2) Explore by tasting?			
	3) Dislike foods of a certain texture?			
VESTIBULAR SENSATION	Does the child:			
	1) Dislike being tossed in the air?			
	2) Seem fearful in space (i.e., going up and down stairs, riding teeter-totter)?			
	3) Appear clumsy, often bumping into things and/or falling down?			
	4) Prefer fast-moving, spinning carnival rides?			
	5) Avoid balance activities?			
MUSCLE TONE	Does the child:			
	1) Have any diagnosed muscle pathology (i.e., spasticity, flaccidity, rigidity, etc.)?			
	2) Seem weaker or stronger than normal?			
	3) Frequently grasp objects too tightly?			
	4) Have a weak grasp?			
	5) Tire easily?			
COORDINATION	Does the child:			
	1) Manipulate small objects easily?			
	2) Seem accident prone? (i.e., have frequent scrapes and bruises)?			
	3) Eat in a sloppy manner?			
	4) Have difficulty with pencil activities?			
	5) Have difficulty dressing and/or fastening clothes?			
	6) Have a consistent hand dominance?			
	7) Neglect one side of the body, or seem unaware of it?			
REFLEX INTEGRATION AND DEVELOPMENT	1) Was the child slow to reach the usual developmental milestones (i.e., sitting, walking, talking)?			
	2) Was the child irritable in infancy, particularly when held?			
	3) Does the child have difficulty isolating head movements?			
	4) Does the child lack adequate protective reactions when falling?			

---

*Adapted from Pat Wilbarger, OTR, Special Education Workshop, St. Paul Public Schools, St. Paul, Minnesota, August, 1973.



POSTURE SCORE SHEET	Name ______			SCORING DATES			
	GOOD - 10	FAIR - 5	POOR - 0				
HEAD LEFT RIGHT	HEAD ERECT GRAVITY LINE PASSES DIRECTLY THROUGH CENTER	HEAD TWISTED OR TURNED TO ONE SIDE SLIGHTLY	HEAD TWISTED OR TURNED TO ONE SIDE MARKEDLY				
SHOULDERS LEFT RIGHT	SHOULDERS LEVEL (HORIZONTALLY)	ONE SHOULDER SLIGHTLY HIGHER THAN OTHER	ONE SHOULDER MARKEDLY HIGHER THAN OTHER				
SPINE LEFT RIGHT	SPINE STRAIGHT	SPINE SLIGHTLY CURVED LATERALLY	SPINE MARKEDLY CURVED LATERALLY				
HIPS LEFT RIGHT	HIPS LEVEL (HORIZONTALLY)	ONE HIP SLIGHTLY HIGHER	ONE HIP MARKEDLY HIGHER				
ANKLES	FEET POINTED STRAIGHT AHEAD	FEET POINTED OUT	FEET POINTED OUT MARKEDLY ANKLES SAG IN (PRONATION)				
NECK	NECK ERECT CHIN IN, HEAD IN BALANCE DIRECTLY ABOVE SHOULDERS	NECK SLIGHTLY FORWARD, CHIN SLIGHTLY OUT	NECK MARKEDLY FORWARD, CHIN MARKEDLY OUT				
UPPER BACK	UPPER BACK NORMALLY ROUNDED	UPPER BACK SLIGHTLY MORE ROUNDED	UPPER BACK MARKEDLY ROUNDED				
TRUNK	TRUNK ERECT	TRUNK INCLINED TO REAR SLIGHTLY	TRUNK INCLINED TO REAR MARKEDLY				
ABDOMEN	ABDOMEN FLAT	ABDOMEN PROTRUDING	ABDOMEN PROTRUDING AND SAGGING				
LOWER BACK	LOWER BACK NORMALLY CURVED	LOWER BACK SLIGHTLY HOLLOW	LOWER BACK MARKEDLY HOLLOW				
ALL REPRODUCTION RIGHTS RESERVED REEDCO INCORPORATED [illegible] COPYRIGHT 1974			TOTAL SCORES				

POSTURE IMPROVEMENT

Adapted Exercise Routines

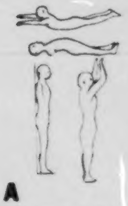
NAME ______________________ ROUTINE ASSIGNED ______________________

DATE ______________________ APPROVED BY ______________________

— PREFACE —

The following suggested procedures have been developed as harmless but highly effective methods to improve body posture. The complete program consists of an objective posture test, 30 days of daily adapted exercises and a re-test. Years of anthropometric research have shown the great majority of non-pathological or non-congenital posture problems to be caused by habitual imbalanced usage and tone of supportive muscle tissue. Gravitational and stress factors working on fatigued or imbalanced muscles can and will bring about posture defects. These conditions worsen and become more difficult to correct as time passes. It is for such common posture defects that these activities are recommended. All questionable conditions should be referred promptly for specialized professional care. The sooner a posture defect is identified, the easier it will be to correct. Therefore, a regular test and re-test program is of the utmost importance, especially for school age children.

ANTERIOR HEAD with Kyphosis

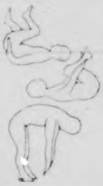


This is the most commonly found posture deviation and has many adverse effects. It usually responds quickly to the following procedures. 1. Simulated "breast stroke swimming" while lying face down with the head held high. Five minute total "swimming" time each day for 30 days. 2. Lie face up and arch the back forming a bridge from the back of the head to the buttocks. Hold ten to twenty seconds—three times each day. 3. Stand with back flattened against the wall and press the back of head against the wall vigorously. Hold 60 seconds—three times each day. 4. Sit or stand erect and breathe in and out deeply. Slowly raise arms up with inhalation and lower with exhalation. 5. Emphasize a sit tall, stand tall, and walk tall attitude.

A

PRINCIPLE—Strengthen upper back muscles and stretch neck and chest muscles.

INCLINED TRUNK with Anterior Pelvis

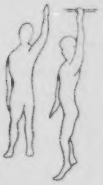


This condition is usually seen in combination with either a forward head and/or lordosis (swayback). Low back trouble and protruding abdomen are among the troublesome side effects. Recommended procedures follow. 1. Lie on back and support lower back with hands. Flex both legs high into a vigorous alternating bicycle leg exercise for a total time of 5 minutes each day. 2. Lie on back and hold a tight knee/chest position for 60 seconds—three times each day. 3. Standing with legs straightened, bend full forward from hips. Hold shoulders tightly downward and under for 60 seconds—three times each day.

B

PRINCIPLE—Stretch back muscles and strengthen and flatten abdominal muscles.

LOW SHOULDER

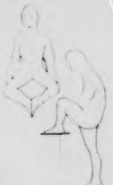


This condition is commonly caused by habitual one sided activity and position. It will respond in part to the following procedures. A. **Low Left Shoulder**—right head deviation. 1. Left arm is fully extended above the head while standing, and right arm is fully extended downward along the side of the body. Exert an upward reaching effort with the left arm and a downward reaching effort with the right arm. Hold for 60 seconds—three times a day. 2. Grip an overhead horizontal bar with the left hand and support the entire body weight for 60 seconds—three times each day. B. **Low Right Shoulder**—left head deviation. The same procedures in reverse are recommended.

C

PRINCIPLE—Strengthen shoulder and neck muscles and stretch trunk muscles.

LOW HIP

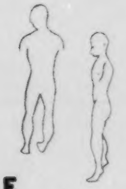


A low hip can be the result of a tipped pelvis or an anatomically short leg. A specialized professional examination is suggested in all conditions exhibiting a limp or greater than a 1 degree tip. An uncorrected low hip can bring about a scoliosis. A healthy tipped hip can many times be corrected by the following procedures. 1. Lie on back and place soles of feet together while bending and separating knees apart. Allow leg weight to force knees to the outside and down. This will tend to loosen and square the pelvic bones. Hold for 60 seconds—3 times each day. 2. Stand on the leg of the high hip and place the foot of the low side hip on the edge of a chair or table. Bend forward and backward from the hips, holding this leg position. Fifty movements each day.

D

PRINCIPLE—Raise low hip, shift weight bearing and loosen pelvic articulation.

ANKLE INVOLUTION — Inward Ankle Roll

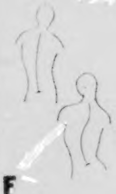


This condition can be congenital but is usually the result of weakness, fatigue, or trauma. The foundation mechanics involved predisposes one to secondary knee and back problems. The center of the tibia should normally be located immediately above and behind the second metatarsal joint. It is a relatively simple procedure to re-align and strengthen an ankle with the following procedures. 1. Roll foot over on to outer edge and bring to bear some standing weight thus stretching the lateral ligaments and re-aligning the tarsal joints. Hold 60 seconds—three times each day. 2. Walk on toes for at least 10 minutes each day while bare footed.

E

PRINCIPLE—Stretch lateral ligaments, re-align metatarsals and strengthen ankle control.

SCOLIOSIS — Spinal Curvature



A. **Simple Scoliosis**—A single "C" curve usually develops as a result of movement and position habits. The spinal musculature becomes imbalanced and should be corrected before the condition progresses into a compound scoliosis. All faulty habits in sitting, sleeping and working should be considered. When indicated, recommendations for a low shoulder or a low hip can be helpful in modifying this condition. B. **Compound Scoliosis**—A fully developed "S" curve scoliosis cannot be corrected by any known exercise routine. The most that can be hoped for is compensation wherein hips and shoulders are leveled and spinal muscles equalized. All uncompensated scoliosis should be referred for specialized professional care.

F

CAT. NO. PX-10

R.A. HAMILTON — AUBURN, N.Y., U.S.A.

ALL REPRODUCTION RIGHTS RESERVED ©
COPYRIGHT 1974

SENSORIMOTOR INTEGRATION PROGRAM CHECKLISTS

Patricia Montgomery, RPT
Eileen Richter, OTR

Published by

WPS
WESTERN PSYCHOLOGICAL SERVICES
PUBLISHERS AND DISTRIBUTORS
12031 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90025
A DIVISION OF MANSON WESTERN CORPORATION

Key:
- * Activities for lower-functioning children
- 2 Performs independently
- 1 Performs with assistance
- 0 Cannot perform
- ? Does not cooperate

Unit I: Rolling Checklist

NAME										
OBSERVATION										
Body righting (rotation)										
Asymmetrical tonic neck										
Neck righting (log rolls)										
Tonic labyrinthine prone										
Tonic labyrinthine supine										
REFLEX INHIBITION										
Isolates head movements: (side to side)										
*Supine: isolates head movement (lifts up)										
*Rolls up in a ball										
*Rolls up/down incline										
Rolls with fleece ball between chin and shoulder										
Rolls: arms over head										
Rolls: arms at side										
*Rolls in barrel										
Rocks: arms over head										
GROSS MOTOR ACTIVITIES										
*Rolls: both directions										
Rocks: side to side										
Side-lying: moves arms and legs										
*Raises and moves legs										
*Raises and moves arms										
*Stomach/back/side: spoken command										
*Rolls: stop/go										
*Rolls: fast/slow										
Follows trail while rolling										
Rolls around circle										
Obstacle course										
FINE MOTOR ACTIVITIES										
*Follows light—pointing										
*Attends to picture 10 seconds										
*Hits swinging object										
*Squeezes objects										
*Explores hands under light										

W-142 E

Copyright © 1977 by WESTERN PSYCHOLOGICAL SERVICES
Not to be reproduced in whole or part without written permission of copyright owner
All rights reserved

1 2 3 4 5 6 7 8 9

Printed in U.S.A.

Unit II: Crawling Checklist

Key: * Activities for lower-functioning children
2 Performs independently
1 Performs with assistance
0 Cannot perform
? Does not cooperate

NAME										
OBSERVATIONS										
Homologous: is symmetrical tonic neck utilized?										
Homolateral: is asymmetrical tonic neck utilized?										
Reciprocal pattern										
Extremity lag										
No pattern or combination of patterns										
REFLEX INHIBITION										
*Prone: raises head in isolation										
*Prone: raises and turns head in isolation										
*Prone on elbows										
GROSS MOTOR ACTIVITIES										
*Supine: lifts both legs										
*Supine: lifts both arms										
Prone rock: grasps ankles										
Crawls sideways										
*Crawls forward/backward										
*Crawls clockwise/counterclockwise										
Stop/go; fast/slow										
Trail										
Obstacle course										
*Prone rock: side to side, arms in front										
*Supine: scoots on back										
SCOOTERBOARDS										
Pushes with hands/feet										
Sideways										
Forward/backward										
Clockwise/counterclockwise										
Trail; obstacle course										
FINE MOTOR ACTIVITIES										
Tug of war										
*Crack the whip										
*Prone on elbows: toys										
*Visually tracks circle										
*Visually tracks across midline of body										

COMMENTS

2

Unit III: Creeping Checklist

Key: * Activities for lower-functioning children
2 Performs independently
1 Performs with assistance
0 Cannot perform
? Does not cooperate

NAME										
OBSERVATION										
Homologous: is symmetrical tonic neck utilized?										
Homolateral: is asymmetrical tonic neck utilized?										
Reciprocal										
No pattern										
REFLEX INHIBITION										
Moves head side to side in isolation										
*Moves head up and down in isolation										
Creeps: washcloth between chin and shoulder										
*Creeps: head straight										
GROSS MOTOR ACTIVITIES										
*Forward/backward										
*Sideways										
*Clockwise/counterclockwise										
Creeps: follows hand signals										
Camel-walks										
Crab-walks: follows hand signals										
Trail										
Obstacle course										
*Moves all directions										
FINE MOTOR ACTIVITIES										
*Transfers: hand to hand										
Transfers: hand to foot										
Finger paints										
Hits suspended ball										
Stacks 2-5 blocks										
[illegible] switch										
Stacks 10 blocks										
[illegible] wads of paper										

COMMENTS

Unit IV: Locomotor Review and Variations Checklist

Key
- * Activities for lower-functioning children
- 2 Performs independently
- 1 Performs with assistance
- 0 Cannot perform
- ? Does not cooperate

NAME										
OBSERVATION Rolls: stop/go, fast/slow										
Reflexes evident in rolling										
Crawls: all directions										
Identifies crawling pattern										
Creeps: all directions										
Identifies creeping pattern										
Needs individual therapy										
REFLEX INHIBITION AND FACILITATION *Side-lying: unilateral movements										
*Side-lying: combined lateral movements										
*3-point balance										
*2-point balance										
GROSS MOTOR ACTIVITIES **Nonlocomotor** *Supine: bilateral symmetrical movements										
*Supine: lateral movements										
Supine: combined bilateral movements										
Supine: reciprocal movements										
*Prone: bilateral symmetrical movements										
Prone: combined bilateral movements										
Prone: reciprocal movements										
GROSS MOTOR ACTIVITIES **Combinations** *Creeps, rolls, creeps										
Creeps, rolls, crawls										
*Obstacle course										
FINE MOTOR ACTIVITIES Flashlight tag										
*Follows flashlight trail										
*Hoop activities										
*Kicks suspended ball										
Crab-walks: kicks ball										
All-fours: kicks ball										

COMMENTS

Unit V: Sitting Checklist

Key
* Activities for lower-functioning children
2 Performs independently
1 Performs with assistance
0 Cannot perform
? Does not cooperate

NAME										
OBSERVATION										
Head righting: left/right										
Trunk righting: left/right										
Protective extension: left/right										
Head and trunk extension										
Reflexes that interfere with sitting posture										
Associated reactions										
Avoiding reaction										
REFLEX FACILITATION										
*Rocks on pillows										
*Rocks on tiltboard										
Bounces on hoppity-hop ball										
*Rocks all directions										
*Rotates trunk										
STRENGTHENING ACTIVITIES										
Shoulder depressors										
Shoulder depressors: head to side										
*Bounces on trampoline										
*LLS: bilateral, circular arm movements										
*LLS: reciprocal movements										
*Circular movements										
SS: push-ups										
FLEXIBILITY ACTIVITIES										
*LLS: touches toes										
LLS: airplanes										
*LLS: chin to knees										
*LLS: twists trunk										
SS: bends, stretches										
SS: pivots in circle										
*TS: reaches all directions										
*TS: twists										
FINE MOTOR ACTIVITIES										
Finger games										
*Pinches clothespins										
*Playdoh exercises										
*Object transfer										

COMMENTS

Unit VI: Kneeling Checklist

Key
- * Activities for lower-functioning children
- 2 Performs independently
- 1 Performs with assistance
- 0 Cannot perform
- ? Does not cooperate

NAME										
OBSERVATION										
Equilibrium										
Protective extension										
Hip stability (support tone)										
REFLEX FACILITATION										
Balances on pillows										
*Balances: one knee										
*Balances: tiltboard, trampoline										
*Falls forward, back up										
*Rocks all directions										
Nose to floor and returns										
Half-kneeling; leg back, etc										
GROSS MOTOR ACTIVITIES										
*Kneel-walks forward										
*Kneel-walks backward										
*Kneel-walks sideways										
*Sits back, kneels up										
*Bilateral symmetrical movements										
*Reciprocal movements										
Propels scooterboards										
Arches back: stretches										
*Isolates head movements										
Isolates trunk movements										
VISUAL-MOTOR ACTIVITIES										
*Soap bubbles										
Strings beads										
Preprimary puzzles										
*Bean bag toss										
*Scribbles										
*Erases										
Circles										
Peg designs										

COMMENTS

Unit VII: Standing Checklist

Key: * Activities for lower-functioning ch
2 Performs independently
1 Performs with assistance
0 Cannot perform
? Does not cooperate

NAME										
OBSERVATION Back curvature										
Flat feet										
Leg length difference										
Head position										
Heel-toe gait										
Reciprocal arm swing										
Gait pattern										
Protective extension										
REFLEX FACILITATION with Support *Isolates head movements: side to side										
*Isolates head movements: up and down										
*Rocks all directions										
Independent *Rocks all directions										
Swings one leg										
Squats										
GROSS MOTOR ACTIVITIES with Support *Push-offs on wall										
Kicks leg back										
Pats wall between legs										
*Walks sideways										
Stands on tiptoes										
Stands on heels										
Independent Knee bends										
*Isolates head movements										
Isolates trunk movements										
*Walks sideways, walks backward										
*Walks on tiptoes										
*Walks on heels										
FINE MOTOR ACTIVITIES *Passes ball										
*"Catches" light beam										
*Scribbles										
*Bilateral lines										

COMMENTS

Unit VIII: Basic Balance Review and Variations Checklist

Key
* Activities for lower-functioning children
2 Performs independently
1 Performs with assistance
0 Cannot perform
? Does not cooperate

NAME										
OBSERVATION										
Sitting: general posture										
Sitting: equilibrium										
Kneeling: protective extension										
Kneeling: equilibrium										
Standing: general posture										
Gait pattern										
Inverted: protective extension										
REFLEX FACILITATION AND INHIBITION										
*Standing: isolates head movements										
Side-sit extension										
Elephant-walks										
*Hot potato: sitting on blocks										
*Kneels: tiltboard										
T-stool: kicks ball										
GROSS MOTOR ACTIVITIES										
*Half-kneel: stands up and returns to kneel										
*Push-ups										
*Sit-ups										
Duck-walks										
*Sits, kneels, stands										
*Circular movements: sits, kneels, stands										
Standing: one knee to chest										
*Marches										
FINE MOTOR ACTIVITIES										
*Through tunnel										
*Bounces ball: two hands										
Traces templates										
*Kicks tether ball										
*Kicks balloons										
*Foot ladder										
Bounces ball in rhythms										
*Rhythm instruments										
Stretch rope activities										

COMMENTS

Minnesota Department of Education
Special Education Section
August, 1975

DRAFT POSITION PAPER FOR SPECIAL EDUCATION

DEVELOPMENTAL/ADAPTED PHYSICAL EDUCATION

Introduction

In Minnesota, special education is concerned about children who are handicapped* receiving an appropriate education in the least restrictive setting. Appropriate means a program designed to meet an individual's identified needs in the cognitive, social/emotional and physical domain. Least restrictive is defined as a program provided in an environment most like that provided for all students (see cascade of services - attached). Essential to this is planning services for students who are handicapped that effectively help them blend into their milieu rather than separate them.

Minnesota Statute 126.02 is unique as it requires that the physical education program must provide "suitable modified courses" for those individuals unable to participate in the regular program. Therefore, special education has not been involved extensively in emphasizing special programs nor reimbursing with special aid every special physical education program. The key to development of successful physical education is cooperation between regular and special education.

Intent of this paper is to outline a policy relating to handicapped students served in physical education programs. Personnel including special supplies and equipment may be eligible for special state aids.

Criteria for Special State Aid

1. Special School Programs. This is a direct service program for students who are handicapped to the extent that they receive the majority of their education program in full-time classes, special stations and/or special schools (Cascade level four, five and seven). This program will be eligible to receive aid when:

    1.1 Instructor is certified as a physical education teacher
    and

    1.2.1 Instructor has completed an adapted physical education program
    or

    1.2.2 Instructor has completed an adapted physical education program equivalent
    or

    1.2.3 Instructor is certified as a corrective therapist.

2. Mainstream Program. This is an indirect service for students who are handicapped and require consultant services from an Adaptive Physical Education Consulting Teacher (Cascade levels 1-3). The Consulting Teacher works with the direct service program described above and also with the regular physical education teacher who has students who are handicapped interspersed in regular physical education classes. The Consulting Teacher will help individualize instruction and design an appropriate physical education program to accommodate to individual differences. This service will be eligible to receive aid when:

   2.1 Consultant is certified as a physical education teacher
   and

   2.2.1 Consultant has completed an adapted physical education program
   or

   2.2.2 Consultant has completed an adapted physical education program equivalent
   or

   2.2.3 Consultant is certified as a corrective therapist
   and

   2.3.1 Consultant has had previous experience as a special physical education teacher
   or

   2.3.2 Consultant has had previous experience as a special education teacher or supervisor.

* For definition of handicapped see 120.03 and EDU 122

Senator **Stafford**. We appreciate your help, Mr. Fillbrandt, very much indeed.

Senator **Boschwitz**. I have no comments. As you note, Mr. Chairman, we have a vote on.

I am an admirer of Aubrey and his work. What I hear this morning, because I have not been filled in as of late, leads me to the continued conclusion that I should continue to help and support him as I can.

Senator **Stafford**. Good. Thank you, Senator, for being here.

As Senator Boschwitz has pointed out, we do have a rollcall going now. It is nearly at the halfway point. When it hits that halfway point, I would have to leave. I would anticipate, since there are three rollcalls, that I will be gone approximately 40 minutes. What I would suggest to our two panelists, if it is agreeable to you, is that you proceed while the chief counsel for the committee is here to listen to your testimony. If you would prefer it though, after a 40-minute delay, I will come back and we will complete it then.

So I will leave the decision as to whether you wish to proceed without me to you. Would you rather go right ahead and get it done?

Dr. **Foshee**. Right, proceed.

Senator **Stafford**. All right. We will go to the next panelist and go until the next bells ring and then I will have to go.

Ms. **Forsythe**. We will continue in the order as listed.

Dr. **Foshee**. My name is James Foshee, and I am the assistant commissioner for mental retardation in the State of Tennessee. My duties include supervising the State's mental retardation institutions as well as other residential and day habilitative services. Included in this responsibility is the delivery of educational services to 600 school aged mentally retarded children who currently reside in the four institutions operated by the State of Tennessee.

Today, I am testifying on behalf of the National Association of State Mental Retardation Program Directors, a nonprofit organization whose members, like myself, administer State-level programs serving over half a million severely and profoundly retarded individuals across the country.

We have followed closely the development of the Education for All Handicapped Children's Act, and believe that it has played a significant role in improving educational services to severely and profoundly retarded children who previously were commonly denied access to such services. We strongly support the provisions of this act and the continuing Federal and State efforts to implement it.

Our statement focuses on issues facing State mental retardation program directors. Many issues arise from the fact that in the case of severely impaired or multihandicapped children, it is programmatically extremely difficult to distinguish between education and habilitation or treatment services. The inability to clearly distinguish between education and habilitation treatment for these children has resulted in confusion in two broad areas.

First, as some of the previous witnesses pointed out, there is confusion concerning financing; that is, who pays for the service. Second, there is confusion concerning agency responsibility and roles. That is, which agency should provide the educational and related services and what is the role of public agencies other than the State educational agency in providing services to children who require multiple services. For example, education, social, rehabilitation treatment, developmental services.

I would like to elaborate briefly on the two areas of confusion and offer some recommendations related to them.

First, the financial confusion. Public Law 94-142 has raised the expectation levels of parents. Many parents now believe that Federal, State, and local educational funding will pay for the special education services and facilities needed by handicapped and severely impaired youngsters. However, under current appropriations, Public Law 94-142 provides only a small percentage—I understand about 12 percent—of the excess costs incurred in educating handicapped children.

While the educational agency is not necessarily expected to pay for all education and related services, it is operating under a Federal mandate to assure education of the handicapped. Other agencies, such as State mental retardation agencies, are not mandated to do so. There is no statutory authority to require mental retardation agencies to provide education-related services. Unfortunately, in many States, including Tennessee, mental retardation agencies do not have the resources to provide a full, appropriate, high-quality educational program for each child under its jurisdiction unless the legislature substantially reorders the agency's priorities so that retarded children are served to the exclusion of retarded multihandicapped adults and elderly individuals who are also under the agency's charge.

The provision of education and related services to institutionalized retarded children present problems. In a number of States, longstanding State statutes require that parents of handicapped youngsters placed in public residential facilities be charged a fee to cover part of the cost of their child's care and maintenance. States levy such parental fees usually according to the parent's ability to pay, for room and board and other services provided to minor children. These fees are often based on the reasonable costs that parents incur in raising a normal child at home.

For example, Tennessee's law requires that "no person shall be maintained at any State hospital or developmental center or private institution furnishing domiciliary care at the expense of the State except an indigent person as defined—".

To complicate this issue, many institutionalized retarded, multihandicapped children are in medicaid funded intermediate care facilities for the mentally retarded. That is ICF/MR's. Under the medicaid program, reimbursement is available for medical supportive and habilitative services provided to retarded children as well as room and board and routine medical and incidental costs. Medicaid, however, will not reimburse for any service that is provided free of charge to the general population. Thus, if an ICF/MR is required to provide room, board, and habilitative services as an adjunct to the provision of educational services (for example, "related services") to an institutionalized retarded child, the facility stands to lose its main supports of funding for such services. That is title XIX reimbursements.

Since the educational agencies do not have sufficient funds to make up for this loss, the question of free related services becomes extremely important.

In connection with the confusion relating to financing, we offer two recommendations. One, we recommend that Congress provide explicit statutory authority recognizing the permissibility of States to charge for services other than specific education and related services provided to children in public residential facilities.

Two, we join the other witnesses this morning in recommending that Congress provide additional funds for Public Law 94-412 aid to the States. In addition, we suggest that Congress provide additional funding targeted on the extraordinary needs of severely handicapped youngsters.

The difficulties in defining educational programing for severely impaired youngsters and in financing their special needs provoke problems in assigning responsibility for furnishing education and related services and in determining the appropriate roles various human services agencies should assume on behalf of such children.

State versus local school district responsibilities are one source of conflict. A recent lawsuit involving three Tennessee school districts and the State educational agency illustrates the problem. The State mental retardation agency, as a result of court mandated deinstitutionalization activities, placed four children in a group home in a school district. The parents of three of the children live in other school districts. The superintendent of the local educational agency agreed to provide educational services for the child whose parents lived in his district. In addition, he was willing to negotiate a contract with the home districts of the remaining three children but was unwilling to provide services to these children unless his school district was reimbursed. Educational representatives of the other districts were unwilling to negotiate, saying essentially that they were supporting educational programs locally and the subject children should be placed in out-of-home settings in the district in which they, the children's parents, reside.

The welfare agency that originally referred the children to the retardation agency had described a social situation which strongly indicated that one of the children should not live near his parents. Foster homes or group homes for the other two children could not be located in the district in which the parents resided. The matter was resolved by lawsuit which gave the State educational agency sufficient leverage to require the local educational agency involved to work out a contract covering the cost of appropriate educational services for the child.

The Public Law 94-142 requirement that a individualized educational program be developed for each handicapped child also raises issues of interagency responsibilities. While the educational agency is responsible for developing and monitoring the handicapped child's educational program under Public Law 94-142, other agencies are required to provide often overlapping plans encompassing the child's other needs. For example, children in ICF/MR facilities must have a habilitation plan.

In California, regional centers for the developmentally disabled must provide similar holistic plans as part of their case management responsibilities for MR/DD clients. Periodically, there is conflicting recommendations from the assessment/program planning teams required under 94-142 and the medicaid regulations.

Again Public Law 94-142 vests the responsibility with the educational agencies for monitoring the IEP and setting standards for special education and related services. For public residential facilities, these educational agency quality assurance activities often overlap and sometimes conflict with a myriad of other program reviews, including medicaid independent professional review and utilization review, State licensure requirements and other program evaluations.

To reduce the confusion related to agency responsibilities and roles, we offer two additional recommendations. We recommend that Congress instruct the Department of Education to clarify the role relationships of educational agencies as they relate to other public agencies, providing the States with sufficient flexibility to adapt the roles to their particular administrative configurations.

Second, we also recommend that the subcommittee explore possible legislative approaches to facilitating better coordination between related Federal programs aimed at serving handicapped children. A useful starting point might be a careful examination of the poorly coordinated individual plan requirements currently incorporated in Federal law and regulation.

In conclusion, we want to recognize the difficulty of getting at the root of the issues we have raised. Nonetheless, we respectfully suggest that further efforts to improve the quality and acceptability of services to multihandicapped children will be largely dependent on finding solutions to these problems, especially as we enter a period of growing fiscal restraints at all levels of government.

Thank you very much.

[The prepared statement of Dr. Foshee along with questions and answers follow:]

STATEMENT OF TESTIMONY

ON

The Education for All
Handicapped Children Act

P.L. 94-142

Respectfully Submitted

to the

SUBCOMMITTEE ON THE HANDICAPPED
SENATE SUBCOMMITTEE ON LABOR AND HUMAN RESOURCES

The Honorable Jennings Randolph, Chairman

by

James G. Foshee, Ph.D.

Assistant Commissioner for Mental Retardation
Tennessee Department of Mental Health/
Mental Retardation

speaking on behalf of the

National Association of State
Mental Retardation Program Directors, Inc.

July 31, 1980

EXECUTIVE SUMMARY

Dr. James Foshee, the Assistant Commissioner for Mental Retardation in the Tennessee Department of Mental Health and Mental Retardation is testifying on behalf of the National Association of State Mental Retardation Program Directors. The Association is a non-profit organization whose members administer state-level programs serving over half a million severely and profoundly retarded individuals across the country.

We strongly support the provisions of the Education for All Handicapped Childrens Act (P.L. 94-142). This statement of testimony focuses on issues in implementing the Act which, in many instances, stem from the fact that it is programmatically difficult, in the case of severely-impaired, multi-handicapped children, to distinguish between what constitutes "educational services" and the other "habilitative services" that these children desperately need.

The confusion over defining services has resulted in confusion over: (1) who pays for services; (2) who provides services; and (3) the appropriate roles that other public agencies should assume on behalf of severely handicapped children who require both education and social, health and/or developmental services.

To "fine-tune" the implementation of P.L. 94-142, as it relates to the needs of severely impaired, multi-handicapped youngsters, NASMRPD recommends:

1. *Congress should provide additional funding targeted at the extraordinary educational needs of severely handicapped youngsters, and direct the Department to enforce provisions of the Act requiring educational agencies to give priority to serving "handicapped children who are not receiving an education, and...handicapped children within each disability, with the most severe handicaps who are receiving an inadequate education." (Section 614(C)(ii)).*

2. *Congress should provide explicit statutory authority recognizing the permissibility of states to charge for services other than specific education and related services provided to children in public residential facilities.*

3. *Congress should instruct the Department to clarify the role relationships of educational agencies as they relate to other public agencies, providing the states with sufficient flexibility to adapt the roles to their particular administrative configurations.*

4. *The Subcommittee should explore possible legislative approaches for facilitating better coordination between related federal programs aimed at serving handicapped children. A useful starting point might be a careful examination of the poorly coordinated individual plan requirements currently incorporated in federal law and regulation.*

Introduction

My name is James Foshee, and I am the Assistant Commissioner for Mental Retardation, in the Tennessee Department of Mental Health and Mental Retardation. My duties include supervising the State's mental retardation institutions, as well as other residential and day habilitative services. Included in this responsibility is the delivery of education services to 600 school-aged mentally retarded children who currently reside in the four institutions operated by the State of Tennessee.

Today, I am testifying on behalf of the National Association of State Mental Retardation Program Directors, a non-profit organization whose members, like myself, administer state-level programs serving over half a million severely and profoundly retarded individuals across the country.

We have followed closely the development of the Education for All Handicapped Children Act (P.L. 94-142), and believe that it has played a significant role in improving educational services to severely and profoundly retarded children who previously were commonly denied access to such services. We strongly support the provisions of this Act, and the continuing federal and state efforts to implement it.

We hope you will hear our testimony not as criticism of the program, but as a helpful identification of areas which could be "fine-tuned" to alleviate some of the problems created in trying to carry out the law. Our statement focuses on issues facing state mental retardation directors, many of which stem from the fact that it is programmatically difficult, in the case of severely impaired, multi-handicapped children, to distinguish between what constitutes "educational services" and the other "habilitative services" that these children desperately need. The confusion over separating "education" from "habilitation" has resulted in confusion over: (1) who pays for services; (2) who provides services; and (3) the appropriate roles that other public agencies should assume on behalf of severely handicapped children who require both education and social, health and/or developmental services.

Furthermore, despite the recent changes in state special education laws, state mental retardation agencies in a majority of states continue to have responsibility for providing educational services to children in public residential facilities.

Defining Education and Related Services. P.L. 94-142 mandates a free appropriate public education for all handicapped children. Many handicapped children can function in modified normal classrooms, or special classes held in regular public school buildings. Unfortunately, the didactic classroom model, typical of practically all public schools, does not serve the educational programming needs of many severely and profoundly retarded youngsters. Indeed, despite many promising developments in this area, technology--both in terms of teaching methods and equipment--remains in its infancy.

We are still struggling with how to define "education," in operational terms, for multi-handicapped, profoundly retarded children, many of whom have no measurable I.Q., cannot sit up on their own, control their eye movement in order to focus on a teacher, cannot speak or even communicate non-verbally, or control their bodily functions. The extensive "habilitative" services these children require--services which may be variously identified as medical, social or educational in nature--constitute a substantial "gray area" which has caused much confusion over where "education" ends and "habilitation" begins.

P.L. 94-142 stipulates that an appropriate eduation for a handicapped child must include the provision of "related services" which are defined in Section 602(17) of the Act to mean: "transportation, and such developmental, corrective and other supportive services...as may be requred to assist a handicapped child to benefit from a special education..." We wholeheartedly support the notion that evey handicapped child deserves to receive the full array of developmental and support services he or she requires to maximize his/her potential. At the same time, we must recognize that in the case of severely impaired youngsters, it is often difficult to determine which services are actually education-related and which are not. If there were no funding constraints or bureaucratic division of responsibility, we might be able to leave such questions to the social philosophers. But, of course, that is far from the case.

One approach that separates education and related services from other developmental services is to identify the type of professional who delivers the service. A teacher would provide educational services, a therapist would provide some of the education-related services, such as speech, occupational or physical therapy, and a nurse would provide medical services, that would not be considered part of the educational program.

The drawback to this approach is that many of the services that fall into the "gray area" between education and habilitation are provided by individuals whose professional degree may have little relevance to the type of services they are delivering. For example, non-medical habilitative services could be provided by a nurse whose experience with multi-handicapped children or special skill training enables her to provide them. Indeed, such non-medical services may fall into the realm of education-related services for severely impaired youngsters.

All of this confusion over defining "education and related services" makes it difficult to assess which agency has the responsibility for providing services to any given child with multiple handicaps. If educational agencies generally agree to provide the child with an "education" and mental retardation agencies agree to provide "habilitation," how do they determine how to draw such distinctions in operational terms. And of equal importance, how do they divide the responsibility of bearing the increasing costs of such services.

Financing Educational Services. P.L. 94-142 has raised the expectation levels of parents to believe that federal, state and local educational funding will pay for the special education services and facilities needed by handicapped and severely impaired youngsters. However, under current appropriations, the P.L. 94-142 funding formula, based on average per pupil expenditures for regular students, provides only a small percentage (12 percent) of the excess costs incurred in educating handicapped children. In fact, appropriations have remained at 12 percent of excess costs over the last three years, despite Congress' original intent to increase federal assistance from 5 percent in fiscal 1978 to 40 percent in fiscal 1982. To bridge this gap between expectations and realities, the Department has emphasized the Act's requirement that educational agencies assure, but not necessarily pay for, the provision of a free appropriate public education and related services, by whatever means possible, including the utilization of existing resources of other public agencies.

However, while the educational agency is operating under a federal mandate to assure education of the handicapped, other agencies, such as state mental retardation agencies, are not. There is no statutory authority to require MR agencies to provide requested education-related services. Unfortunately, in many states, including Tennessee, MR agencies do not have the wherewithal to provide a full, appropriate, high-quality education program for each child under its jurisdiction, unless the legislature substantially reorders the agency's priorities so that retarded children are served to the exclusion of retarded, multi-handicapped adults and elderly individuals who are also under the agency's charge.

The provision of a free education to handicapped children also is a source of concern for mental retardation agencies in providing educational and related services to their institutionalized retarded children. In a number of states, long-standing state statutes require that parents of handicapped youngsters placed in residential facilities be charged a fee to cover some of the costs of care and maintenance. States levy such parental fees, usually according to the parents' ability to pay, for room and board and other services provided to minor children. These fees are often based on the reasonable costs a parent would incur in raising a normal child at home, both in terms of food, shelter and routine medical and incidental expenses.

For example, the State of Tennessee Code requires that "no person shall be maintained in any state hospital or developmental center or private institution furnishing domicilliary care at the expense of the state except an indigent person as defined [elsewhere]..." (Tenn. Code Annotated, 33-46).

However, under the Department's currently broad interpretation of education and related services, room and board in an institution as well as educational services must be provided at no cost to the parent if the handicapped child was placed there for educational purposes (45 CFR Part 121a.302). The ambiguity of what is considered to be "education" for a severely impaired child has led to administrative and legal challenges of the state statutes requiring such parental fees.

To complicate this issue, many institutionalized retarded, mulit-handicapped children are in Medicaid-funded intermediate care facilities for the mentally retarded (ICF/MRs). Under the Medicaid program, reimbursement is available for medical supportive and habilitative services provided to retarded children, as well as room and board and routine medical and incidental costs. Medicaid, however, will not reimburse for any service that is provided free-of-charge to the general population. Thus, if an ICF/MR is required to provde room, board, and habilitative services as "related services" as an adjunct to the provision of educational services to an institutionalized retarded child, the facility stands to lost its main source of funding for such services (i.e., Title XIX reimbursements). Since the educational agencies do not have sufficient funds to make up for this loss, the question of free related services becomes extremely important.

We recommend that Congress provide explicit statutory authority recognizing the permissibility of states to charge for services other than specific education and related services provided to children in public residential facilities.

We also recommend that Congress provide additional funding targeted at the extraordinary educational needs of severely handicapped youngsters, and direct the Department to enforce provisions of the Act requiring educational agencies to give priority to serving "handicapped children who are not receiving an education, and...handicapped children within each disability, with the most severe handicaps who are receiving an inadequate education." (Section 614(C)(ii)).

Responsibility for Providing Services. Difficulties in defining educational programming for severely impaired youngsters and in financing their special needs provoke problems in assigning responsibility for furnishing education and related services and in determining the appropriate roles various human services agencies should assume on behalf of these children.

For example, state v. local school district responsibilities are one source of conflict. A recent lawsuit in a Tennessee county illustrates this problem. When the state mental retardation agency found a foster home in which to place a retarded youngster in Wilson county, the county's local educational agency was asked to provide special education for the child. The LEA did not have appropriate services available and refused to pay either to provide them in its district or to contract with another nearby school district for special educational services. The LEA claimed that the child was not its responsibility since he was being placed by the state from another school district. The LEA also recommended placing the child in a foster home in a school district that could provide appropriate services. However, the MR agency did not have such a foster home available.

The matter was resolved by a lawsuit, which gave the state educational agency sufficient leverage (authority to withhold funds) to require the LEA's involved to work out a contract covering the cost of appropriate educational services for the child.

A similar problem is the provision of year-round educational services to handicapped children. If the child's individualized education program calls for 12-month educational programming, then the LEA is supposed to provide it. However, frequently school districts refuse to cover the cost of summer programs. In Tennessee, for example, the LEAs seem to be ignoring the 12-month requirements in IEPs, simply by reimbursing for 10 months of educational services only. A lawsuit may be brewing in one Tennessee county where the LEA has refused to provide year-round programming for a severely retarded, autistic child. While full-year services are vital for many handicapped children, it is understandable that without sufficient funding these services cannot be provided.

The IEP itself raises issues of interagency responsibilities. While the educational agency is responsible for developing and monitoring the handicapped child's education program under P.L. 94-142, other agencies are required to provide often overlapping plans encompassing the child's other needs. For example, children in ICF/MRs must have an individualized habilitation plan. Programs receiving funding under the Developmental Disabilities Act are required to develop a wholistic "individual habilitation plan" on all clients served through the Act. In California, regional centers must provide similar wholistic plans as part of their case management responsibilities for MR/DD clients.

Creating a workable plan for developmental, habilitative and educational services is only half of the problem. Enforcing the provisions and assuring the quality of the services provided under the plans is the other half of the challenge. Again, P.L. 94-142 vests the responsibility with the educational agencies for monitoring the IEP and setting standards for the special education and related services. For public residential facilities, these educational agency quality assurance activities often overlap and sometimes conflict with a myriad of other program reviews, including Medicaid Independent Professional Review and Utilization Review, state licensure requirements and other program evaluations.

We recommend that Congress instruct the Department to clarify the role relationships of educational agencies as they relate to other public agencies, providing the states with sufficient flexibility to adapt the roles to their particular administrative configurations.

We also recommend that the Subcommittee explore possible legislative approaches for facilitating better coordination between related federal programs aimed at serving handicapped children. A useful starting point might be a careful examination of the poorly coordinated individual plan requirements currently incorporated in federal law and regulation.

In conclusion, we want to recognize the difficulty of getting at the root of the issues we have raised. Nonetheless, we respectfully suggest that further efforts to improve the quality and accessibility of services to the multi-handicapped will be largely dependent on funding solutions to these problems--especially as we enter a period of growing fiscal restraints at all levels of government.

SEP 8 1980

**NATIONAL ASSOCIATION OF
STATE MENTAL RETARDATION
PROGRAM DIRECTORS, INC.**

2001 Jefferson Davis Highway Arlington, Virginia 22202
Robert M. Gettings, Executive Director 703/920-0700

September 5, 1980

Senator Jennings Randolph
Chairman
Subcommittee on the Handicapped
Committee on Labor and Human
Resources
3203 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Randolph:

Thank you for giving me the opportunity to testify before the Subcommittee on the Handicapped on July 31 on issues relating to the Education of the Handicapped Act. The two questions you posed in your letter of August 1 cut to the heart of our concerns.

Your first question asked NASMRPD to offer specific recommendations for assigning roles and responsibilities to various agencies for financing and providing education and related services to handicapped children. We believe that, at this stage, federal policy should foster a pluralistic approach to public agency responsibility for the funding and delivering of services, as well as standard setting, quality assurance, and monitoring activities. A pluralistic federal policy would take cognizance of the quite different approaches used by the states in distributing responsibility for serving severely and profoundly retarded, multi-handicapped children.

For example, some states have assigned total responsibility for delivering education services to local public schools, regardless of where the child resides; others have created a special school district operated by the state MR agency to program for severely/profoundly retarded children; still others have given the local educational agency the task of programming for all children living in the community, but left responsibility for educating school-aged, institutionalized children with the agency operating the institution.

PRESIDENT
Ann F. Wolfe, M.D.
Deputy Director
Division of Mental Health Services
P.O. Box 26327
Raleigh, NC 27611

VICE PRESIDENT
Gareth Thorne
Hartford, CT

SECRETARY-TREASURER
Don Payne, Ph.D.
Richmond, VA

BOARD MEMBERS
Richard Blanton, Ph.D.
Springfield, IL
Otto P. Estes
Baton Rouge, LA
Thomas E. Scheinost
Pierre, SD

IMMEDIATE PAST PRESIDENT
Maurice G. Kott, Ph.D.
Trenton, NJ

Senator Jennings Randolph
September 5, 1980
Page Two

Given the diversity of organizational and financing models currently in place within the states, we feel that federal policy should encourage cooperation between the various subsystems (i.e., health, education, social services, mental health/mental retardation, etc.) that deal with such children, rather than trying to develop absolute federal criteria for what constitutes a "related service" which the state or local educational agency must pay for, or mandating that educational services must be delivered by the educational system, etc.

State and local educational agencies, at some future date may be capable of providing educational and related services to all children, regardless of their level of handicap or housing arrangement. In the meantime, rigidity in federal policy, we believe, defeats attempts to assure the delivery of optimal services to severely and profoundly retarded children, most of whom will require a constellation of health, education, income maintenance, and social welfare services over an indefinite period of time. Most educational agencies currently are not in a position to assume responsibility for assuring that such children receive the full array of services they require, in the appropriate sequence.

Your second question asked that we define the term "habilitation" and differentiate between habilitation, training and education. As we noted in our testimony, it is not possible to differentiate between habilitation and education for the severely/profoundly retarded, multi-handicapped child. "Habilitation" is an umbrella concept, encompassing education, training and other techniques for assisting a handicapped child or adult to attain his or her optimal functional or developmental level. "Habilitation" is defined by the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Persons* as:

> "the process by which the staff of any agency assists individuals to acquire and maintain those life skills that enable them to cope more effectively with the demands of their own persons and of their environments, and to raise the levels of their physical, mental and social functioning. Habilitation includes, but is not limited to, programs of formal, structured education and treatment."

By contrast, the Council defines the term "education" as: "a socially directed process to facilitate learning and development through deliberate interventions." "Training," according to the Council, "refers to an organized program for acquiring, improving or maintaining a particular skill."

---

* From: Standards for Services for Developmentally Disabled Individuals, adopted September 20, 1977.

Senator Jennings Randolph
September 5, 1980
Page Three

The line drawn between education and other habilitation services for multi-handicapped children is almost always an arbitrary one. We recognize that such a line must be drawn for administrative and financing purposes, but recommend that, for purposes of federal policy, states be given sufficient flexibility to allow the various agencies involved to develop interagency agreements concerning service delivery, financial and monitoring responsibilities which will permit the optimal utilization of local resources and expertise. Perhaps the best way to motivate state and local agencies to negotiate such interagency agreements is to provide some federal fiscal incentive to do so.

I hope that I have been responsive to your questions. If we can be of further assistance, please do not hesitate to contact me directly or the NASMRPD staff.

Sincerely,

James G. Foshee

James G. Foshee, Ph.D.

Ms. **Forsythe**. Thank you, Dr. Foshee.

Will you please continue, Ms. Ford?

Ms. **Ford**. Although last on this panel, I do not feel that occupational therapists are far from least in the educational team.

I am Lana Ford, an assistant professor in the occupational therapy curriculum at the Medical College of Virginia, Virginia Commonwealth University, former consultant to the Richmond City School System, consultant to the Henrico Adult Developmental Center and Brandon Training School in Vermont. I am here today representing the American Occupational Therapy Association and its 29,000 members and particularly the 3,000 therapists employed in public school programs.

The American Occupational Therapy Association, AOTA, is pleased to submit testimony to the Subcommittee on the Handicapped of the Committee on Labor and Human Resources as the Subcommittee continues oversight hearings on Public Law 94-142.

In the interest of time, I will summarize the written statement, giving examples from several therapists I have contacted in my State and the surrounding area, and outline problems associated with implementation of Public Law 94-142.

Our association fully supports Public Law 94-142 and believes the basic legislation is sound. At the implementation stage, however, we have encountered problems in connection with the provision of related services, specifically those related to interagency cooperation, enforcement procedures, certification requirements and inservice training.

The American Occupational Therapy Association's perception of occupational therapy as a related service is one that has a relationship to the educational goals of each individual child. We believe it is the responsibility of the Individualized Education Plan, IEP, team to determine whether a service is truly related to a child's special education and to document that relationship. Occupational therapists employed in public school programs utilize their training in the psychological and biological sciences to bring about positive changes in the handicapped child's growth and development to increase independent functioning and performance in occupational tasks.

The first of the problems involved in the implementation of Public Law 94-142 which I would like to address is the lack of interagency cooperation in the provision of related services.

Our national office has been informed by occupational therapists working in school settings and by the parents of handicapped children that in many areas timely identification and subsequent delivery of related services is not occurring. Several Federal programs, such as Head Start, Crippled Children Services, and programs under the Rehabilitation Act, are designated to provide children with related services such as occupational therapy. If properly coordinated, these programs could effectively serve many of the children covered under Public Law 94-142. The Office of Special Education—OSE—has identified that such cooperation is necessary for maximum coordination and utilization of services, and the AOTA commends the office for the example it has set in entering into a number of interagency agreements at the Federal level. This example, however, has not been replicated on a widespread basis at the State and local level. Moreover, in many instances where State and local educational agencies have entered into agreements with other agencies, these agreements tend to be only on paper and are not realized in the actual delivery of services to children.

An example I can cite for you, related to this problem, is that of a therapist working in central Virginia under an interagency agreement. The therapist works in a comprehensive diagnostic program, housed in a public school facility. The therapist completes assessments for children aged 12 to 17, but no direct services are provided because the children have not been categorically placed in special education programs. Other therapists who are employees of the public school also work in the same building, but they too only provide evaluations. In this one building, therefore, two separate agencies engage therapists to perform assessments and evaluations, but due to the lack of interagency cooperation, no provision is made for the delivery of occupational therapy treatment when such treatment is required. Important needs of the children then frequently remain unserved.

Our association believes a major reason for poor implementation of such agreements is the lack of specific terms which commit the sharing of dollars, facilities and materials. Although in theory the services are available, they are frequently never received because of the agency maze which a person must negotiate to receive them. If agencies are to work in a cooperative manner, each overseeing the child while under their services, the Federal Government must provide assistance and guidelines to these agencies to facilitate the interface process.

The association, therefore, recommends that the Office of Special Education establish as a high priority the initiation of a program to develop interagency cooperative agreements at the State and local levels. These agreements, moreover, should include provisions for the sharing of public and private funds and resources. The association also suggests that the Office of Special Education conduct demonstration projects in 6 to 10 states emphasizing interagency cooperation, and that most of the States chosen for such projects demonstrate current compliance with Public Law 94-142.

A second area of concern involves the enforcement procedures, specifically the individualized education plan—IEP—and the due process procedures, which are included in Public Law 94-142 to assure that handicapped children receive appropriate related services. An important key to the appropriate use of these mandated procedures is the parents of handicapped children and their understanding of the law, its regulations, and their own State education laws.

The occupational therapist is often in a position to assist parents in learning their rights under the law, but as an employee of the local educational agency—LEA—as is often the case, the therapist is in a very vulnerable position. Therapists can give general advice to parents as to their rights, but they are often reluctant to answer specific questions about the IEP and the due process provisions. Their reluctance to do so is associated with the fear of repercussion from employers and supervisors at the local level.

For instance, it has often been reported to us that when an occupational therapist evaluates a child and believes occupational therapy treatment is indicated, there may be substantial pressure from the school administrator not to recommend that occupational therapy become a part of the child's IEP. I know of one instance where one of two therapists who cover 26 schools in a single district was advised that if she put occupational therapy into the IEP, she personally would have to provide the service. If her own already overloaded schedule prevented her from delivering treatment, then the administrative directive forced her to exclude occupational therapy from the IEP. Obviously such a practice runs counter to the intent of the law and could be challenged by the parents of the children who are denied needed services.

In another situation, a therapist reported to me that school officials had informed her that, although she must serve all identified children, she could have no waiting list for direct service. Because of the number of children identified, the therapist was only able to schedule 15 minutes of therapy per child per month—definitely an inadequate and inappropriate intervention schedule.

In yet a third situation a therapist stated that the school principal told her not to worry about direct service. If she could not see the child, she could just drop by and check on him and write on the IEP that she was providing consultation services.

All three situations illustrate how the intent and purpose of Public Law 94-142 is frequently frustrated as a result of administrative and supervisory pressure to use occupational therapists to meet the mandate of the law but in ways that circumvent the intent of the law. Every effort must be made to correct such practices. Certainly improved parent education could greatly assist in this matter.

The issue of State certification requirements for occupational therapists is the third issue I would like to address. The AOTA has maintained for over 30 years the only national certification system for occupational therapists. Licensure laws for occupational therapists have been enacted in 14 States, the District of Columbia and Puerto Rico. All of these incorporate the same education, clinical experience, and examination requirements as contained in the AOTA certification system.

This national standardization in the requirements for an occupational therapist is frequently not recognized by State educational agencies responsible for Public Law 94-142. On the contrary, diversity rather than uniformity is more the rule of the day. In addition to the AOTA certification requirements mentioned above, therapists are required to have two to nine education credits or a degree in special education or to have completed written tests in subjects such as reading and math. One State insists on a supervised clinical experience of 3 months in a school setting. Another requires completion of a course related to Public Law 94-142.

In my own State, which does not have licensure, I am aware of an instance where a therapist refused to sign a teacher contract and would not accept a job title as an educational or developmental specialist, insisting instead on a contract for occupational therapy services. The repercussion of that decision was that the same therapist was denied promotion 3 years later because the LEA had no criteria, no job description, and no uniform evaluation system to promote an occupational therapist.

Our association believes that some educational or clinical experience specifically designed to prepare therapists to work in school settings would be a beneficial addition to the occupational therapist professional preparation. In fact, with support from OSE, the roles and functions of occupational therapists in school systems has been completed, and this information has now been incorporated into the development of an educational program for therapists who have practiced or intend to practice in the educational system.

The association's main interest in this regard is the national recognition and application of regulatory language which standardizes requirements for occupational therapists. We believe this national uniformity is important for many reasons, not least of which relates to manpower supply. The association, therefore, recommends that occupational therapists be certified presently as occupational therapists in the school system rather than as teachers or special education personnel. We further recommend that in the future such additional certification requirements be mandated on a national level so as not to limit mobility of therapists from State to State.

The last issue I will present is the lack of school-based inservice training for related service personnel. As Public Law 94-142 indicates, there is a mandate to assess the needs of the school system personnel and provide appropriate inservice training. Our association recommends that OSE continue to support federally funded continuing education programs for occupational therapists as in the past, and we also recommend that States be given guidelines as to how they might meet the needs of the school-based therapists through State inservice programs.

The association is pleased to report that the OSE has funded two projects relative to enhancing the skills of occupational therapists working in school systems. The year 1981 will begin the third year of a grant providing workshops in the 50 States, the District of Columbia, and Puerto Rico. A second grant will assist occupational therapy curriculums in modifying their programs to incorporate aspects of the first grant into basic occupational therapy education. We would encourage OSE to continue to support grants which provide inservice education at the local educational level. We hope, too, that the local educational agencies will support these workshops by encouraging occupational therapists in the school system to attend, which has not always been the case in the past.

The American Occupational Therapy Association appreciates this opportunity to present our views to you. While Public Law 94-142 is still a relatively new law with problems to overcome, we believe the oversight process is most important in redirecting the intent for which Public Law 94-142 was originally drafted—that of providing a free and appropriate public school education program for all handicapped students.

Thank you.

Ms. **Forsythe**. Thank you very much, Ms. Ford.

Senator Randolph has just called and asked me to express his regrets that he could not be here. He had to go directly from the White House to the floor, as Senator Stafford explained. There are three roll calls back to back on important measures on the floor at this time. He wanted me to thank each and every one of you for being here and say that you will be receiving questions from members of the subcommittee after they have reviewed your testimony.

Thank you very much.

[The prepared statement of Ms. Ford, questions and answers, and additional material submitted for the record follow:]

aota

The American Occupational Therapy Association, Inc.

Mae D. Hightower-Vandamm
PRESIDENT
James J. Garibaldi
EXECUTIVE DIRECTOR

STATEMENT
OF THE
AMERICAN OCCUPATIONAL THERAPY ASSOCIATION

ON

P.L. 94-142
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

SUBMITTED TO

COMMITTEE ON LABOR AND HUMAN RESOURCES

U.S. SENATE

JULY 31, 1980

1383 Piccard Drive   Rockville, Maryland 20850   (301) 948-9626

My name is Lana Ford. I am an Assistant Professor in the occupational therapy curriculum at the Medical College of Virginia, Virginia Commonwealth University and a consultant to the Richmond City School System. I am here today representing the American Occupational Therapy Association and its 29,000 members.

The American Occupational Therapy Association is pleased to submit testimony to the Subcommittee on the Handicapped of the Committee on Labor and Human Resources as the Committee continues oversight hearings on Public Law 94-142, The Education for All Handicapped Children Act.

For over sixty years this Association has represented health professionals who specialize in increasing the independent functioning and productivity of persons of all ages who suffer from developmental disabilities and emotional disorders, or who are disabled by physical injury or disease.

Since the passage of P.L. 94-142, the services provided by occupational therapists in the school system have more than doubled. The school based occupational therapist has become a valuable member of the educational team who provides screening, evaluation, and direct therapy for students, and serves as a consultant to parents, teachers, and school administrators.

Today's occupational therapists utilize their training in the psychological and biological sciences to bring about positive changes in the handicapped child's growth and development and provide a strong foundation for the educational process. The occupational therapist's role is supportive of and complementary to other health professionals and educators who provide services to handicapped children. As members of educational management teams, occupational therapists have five primary roles in coordinating services within educational systems. The roles are:

I. Evaluating/screening students with a variety of health care problems to identify the need for an occupational therapy intervention program;

II. Participating in educational program planning for individual students to coordinate occupational therapy goals and program plans with total educational programs;

III. Implementing appropriate intervention programs to facilitate optimum functioning and enhance a student's ability to learn and develop;

IV. Managing/supervising school-based occupational therapy programs; and

V. Consulting with school personnel and parents regarding services provided by occupational therapy.

Our Association fully supports P.L. 94-142, the most significant law ever passed to ensure equal opportunity to a meaningful education for all handicapped children. We believe, moreover, that the basic legislation is sound and contains no serious deficiencies. At the implementation stage, however, we have encountered certain problems in connection with the provision of related services - problems which we believe prevent full achievement of the legislative goals. Specifically, these problems relate to interagency cooperation, enforcement procedures, certification requirements, and in-service training.

Interagency Cooperation for Related Services Delivery

The identification of handicapped children and the provision of appropriate special education and related services in the least restrictive environment is the major thrust of P.L. 94-142. We have been informed by occupational therapists working in school settings and by the parents of handicapped children that in many areas timely identification and subsequent delivery of related service is not occurring. Several federal programs, such as Head Start, Crippled Children Services, and programs under the Rehabilitation Act, are designed to provide children with related services such as occupational therapy. If properly coordinated, these programs could effectively serve many of the children covered under P.L. 94-142. The Office of Special Education has identified that such cooperation is necessary for maximum coordination and utilization of services, and the AOTA commends the Office of Special Education (OSE) for the example it has set in entering into a number of interagency agreements at the federal level. This example, however, has not been replicated on a widespread basis at the state and local level. Moreover, in many instances where state and local educational agencies have entered into agreements with other agencies, these agreements tend to be only on paper and are not realized in the actual delivery of services to children.

Our Association believes a major reason for poor implementation of such agreements is the lack of specific terms which commit the sharing of dollars, facilities, and materials. Legislative authority exists for a continuum of services for handicapped persons from birth to adulthood. Although in theory the services are available, they are frequently never received because of the agency maze which a person must negotiate to receive them. This is especially true for children served under P.L. 94-142. If primary responsibility for services under this Act shall continue to reside in educational agenices, then assistance must be provided to ensure proper coordination with the resouces of other programs. If agencies are to work in a cooperative manner, each overseeing the child while under their services, the federal government must provide assistance to these agencies to facilitate the interface process.

At this time, the Association recommends that a program to actively facilitate cooperative agreements, including provisions for the sharing of funds of federally and privately funded programs, be considered a high priority of the Office of Special Education. The Association suggests that the Office of Special Education conduct demonstration projects in six to ten states emphasizing interagency cooperation. We suggest that most of the states chosen for such projects demonstrate current compliance with P.L. 94-142. However, one or two states that are experiencing difficulty providing services to handicapped children should be included to demonstrate whether full services can be achieved through interagency efforts.

Enforcement Procedures under P.L. 94-142

Included in P.L. 94-142 are two important enforcement procedures to assure that handicapped children receive appropriate related services. They are the Individual Educational Plan (IEP) and the Due process procedures. An important key to the appropriate use of these mandated procedures is the parents of handicapped children and their understanding of the law, its regulations, and their own state education laws. This is a major undertaking for any parent, and according to responses we have received from occupational therapists throughout the country, school systems are doing very little to facilitate this understanding.

The occupational therapist is often in a position to assist parents in learning their rights under the law, but as an employee of the Local Educational Agency (LEA), as is often the case, the therapist is in a very vulnerable position. The therapist can advise the parents as to their rights specified by federal law and regulation, but are reluctant to answer specific questions about the IEP and Due Process. Their reluctance to do so is associated with fear of repercussion from the LEA. For instance, it has often been reported to us that when an occupational therapist evaluates a child and believes occupational therapy treatment is indicated, there is substantial pressure from the school administrator not to recommend that occupational therapy become part of the child's IEP. We recognize that certain practical problems cause this pressure, namely, the lack of sufficient funds to purchase the service or of qualified personnel to provide the service or the absence of physical space to expand therapy programs.

A result of this practice is that occupational therapists are often used only to meet the mandate of the law for screening children rather than one-to one treatment or consultation. The role of the occupational therapist in screening children is usually to determine which children need further occupational therapy evaluation and services. Although screening may allow the school district to comply with the law, the inability to write occupational therapy services into the IEP circumvents the intent of the law.

The Association commends the Office of Special Education for its most recent Policy Paper on the Individualized Education Program. This paper states that related service persons should either attend the IEP meeting or submit written recommendations concerning the nature and amount of services to be provided to a child. This paper also defines the parents role as an active and equal member of the IEP team in developing, reviewing and revising their child's IEP.

Since this paper, however, only deals with the IEP meeting it does not prevent the LEA from hindering full evaluation by related service providers such as occupational therapists after the screening procedure has indicated a problem which necessitates thorough evaluation.

Variety of State Certification Requirements for School-Based Occupational Therapy Personnel

The AOTA has maintained for over thirty years the only national certification system for occupational therapists. Certified occupational therapists have completed a four-year baccalaureate program or a two-year post-baccalaureate certificate or master's program, have undergone six months of supervised clinical experience, and have passed a national certification examination. Licensure laws for occupational therapists have been enacted in fourteen states, the District of Columbia and Puerto Rico. All of these laws incorporate the same education, clinical experience, and examination requirements as contained in the AOTA certification system.

This national standardization in the requirements for an occupational therapist is frequently not recognized by state educational agencies responsible for P.L. 94-142. On the contrary, diversity rather than uniformity is more the rule of the day. In addition to the AOTA certification requirements mentioned above, therapists are required to have two to nine education credits or a degree in special education or to have completed written tests in subjects such as reading and math. One state insists on a supervised clinical experience of three months in a school setting. Another requires completion of a course related to P.L. 94-142.

Our Association believes that some educational or clinical experience specifically designed to prepare therapists to work in school settings would be a beneficial addition to the occupational therapist preparation process. We would be more than willing to work with agency personnel to develop such a requirement. In fact, with support for OSE, the roles and functions of occupational therapists in school systems has been completed, and this information has now been incorporated into the development of an educational program for therapists who have or intend to enter the educational system.

The Association's main interest in this regard,however, is the national recognition and application of the requirements which are developed. We believe this national uniformity is important for many reasons, not least of which relates to manpower supply. State agency plans for 1978-79 reflected a 50 percent increase in demand for occupational therapists. Moreover, in a questionnaire sent to State Educational Agencies, out of 42 responses, 25 cited "lack of available therapists" as a reason for not having sufficient occupational therapists in their school systems. The diversity of certification requirements for occupational therapists in educational systems only adds to this manpower problem. It limits the movement of therapists from state to state. It also discourages occupational therapy students from pursuing any specific educational courses or clinical experience since they cannot be certain that they will be applicable in the state in which they eventually work.

The Association, therefore, recommends that occupational therapists be certified presently as occupational therapists in the school system, rather than as teachers of special education personnel. We anticipate additional certification requirements for occupational therapists to emerge from an AOTA grant funded by OSE. These requirements will be related specifically to the actual role and function of occupational therapists in the school system. We further recommend that in the future such additional certifiction requirements be mandated on a national level.

In-service Training

The lack of school-based in-service training for related service personnel has been a frequent complaint from our membership. The federal regulations for P.L. 94-142 indicate a mandate to assess the needs of the school system personnel and provide appropriate in-service training.

In a survey of State Educational Agencies, eleven states out of 42 responses commented that occupational therapists needed additional information about the educational system and how to work effectively in the educational model. A survey of occupational therapists indicates the same felt needs. It is, then, curious why the State Educational Agencies have not provided this type of in-service training to the health-related professional to assist in meeting the "in-service training" requirements of P.L. 94-142.

The Association is pleased to report that the OSE has funded two projects relative to enhancing the skills of occupational therapists working in school systems. 1981 will begin the third year of a grant providing workshops in the 50 states, the District of Columbia and Puerto Rico to provide occupational therapists with specific skills needed to serve children in schools. We hope that the State Educational Agencies will support these workshops by encouraging occupational therapists in the school system to attend.

A second grant has recently been awarded to AOTA by OSE to assist our curricula in modifying their programs to incorporate aspects of the first grant into our basic occupational therapy education. This will eventually prepare the new graduate to work more effectively in the school setting.

We would encourage the OSE to continue to support grants which in-service the related service providers and others especially at the local educational agency level.

The Association appreciates this opportunity to present our views to you today. P.L. 94-142 is still a relatively new law with problems to overcome, and we believe the oversight process is most important in light of the potential positive results in emphasizing the intent of P.L. 94-142.

aota
The American Occupational Therapy Association, Inc.

Mae D. Hightower-Vandamm
PRESIDENT
James J. Garibaldi
EXECUTIVE DIRECTOR

1980 AUG 19 PM 3:38

August 18, 1980

Received
Date 8-20-80
Subcommittee on
The Handicapped

The Honorable Jennings Randolph
Chairman
Subcommittee on the Handicapped
Room 4230 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Randolph:

I appreciated the opportunity to testify before your Subcommittee on behalf of the American Occupational Therapy Association. At this time I would like to respond to the question you sent me regarding my testimony.

Question: In your testimony you mention that the occupational therapist is in a position to inform parents of their rights under the law, but hesitate due to the fact that they are an employee of the local educational agency. Do you have any recommendations that would help to alleviate this type of situation?

Response: As I stated in my oral testimony, some administrators try and can control the amount of related services provided by asking therapists to not recommend occupational therapy. They can also request that therapy personnel do not advise parents about their rights under PL 94-142, but rather allow the school administrator to provide such information.

Traditionally employees of the system, in this case the school system, are considered or assumed to be advocates of the system. With respect to handicapped children and PL 94-142, however, school personnel should always be advocates for the child. We believe if the latter is emphasized less situations such as we described will occur.

The federal regulations discuss publishing the rights of parents and children in the newspaper and other media, but do not specifically suggest that all school personnel provide this information as needed. Due to the complexity of this law we believe that federal regulations or a policy paper from the Office of Special Education clearly state that all school personnel should assume the responsibility to avail parents of their rights as needed. With the problems surrounding this law all school personnel involved with children should assist parents through providing information rather than leave it to school administrators. The school personnel seeing the parents most frequently are the ideal person or persons to assist a parent in understanding PL 94-142 and relative state laws.

Again, thank you for the opportunity to testify before your Subcommittee. The American Occupational Therapy Association and I are always available to assist your Subcommittee in any way possible.

Sincerely,

Lana Ford, OTR

Lana Ford, OTR

LF:sll

NATIONAL COMMITTEE FOR CITIZENS IN EDUCATION
Suite 410, Wilde Lake Village Green • Columbia, Maryland 21044 • 301-997-9300

August 22, 1980

Contact: Stanley Salett
301-997-9300

Advocates Warn

Teachers' Union Would Cut Parents Out of Handicapped Plans

Two leading advocacy groups for parents and school children have joined in defending major provisions of the federal Education for All Handicapped Children Act (P.L. 94-142) against its recent attack by Albert Shanker, president of the American Federation of Teachers (AFT).

The National Committee for Citizens in Education (NCCE) and the Children's Defense Fund (CDF) have blasted Shanker's recent recommendations before the Senate Subcommittee on the Handicapped that important rights of parents and children be suspended. He called for the elimination of Individual Education Plans, which are developed with parent involvement for each child served, and the Least Restrictive Environment mandate, requiring that the children spend as much time as possible in regular classrooms, unless Congress is willing to infuse new billions to pay the cost of implementing the law, because he said they take too much time and money and are not working very well anyway.

Noting that Congress is unlikely to vote "several billions" immediately, the advocates accused Shanker of using the financial woes of his home state of New York as an excuse to scuttle the critical rights of handicapped children five years after enactment of the law. NCCE and CDF dismissed as ludicrous his assertion that parents lose "confidence in the schools, in some instances, as a result of educators asking them for their opinions on their child's placement and program."

more . . .

Using Shanker's own argument for improving teacher preparation, the advocacy groups urge that more, not less, be done to bring parents into the IEP process to comply with the law. "Just as the AFT president has called for more inservice training to prepare regular classroom teachers to meet the needs of handicapped children, we call on the Office of Special Education, the state education agencies, and local school districts to expend more effort to bring the IEP process up to standard," said group spokesperson, Stanley Salett, of NCCE. "Involving parents in the decisions that affect the education of their handicapped children is central to the purpose of this law. What Mr. Shanker is suggesting would seriously impair the educational rights of handicapped children and their families. Our own studies and the recent report of the Education Advocates Coalition, an 11-page survey coordinated by CDF, call instead for strengthened parent involvement and more effective enforcement of their rights by the Education Department." The advocates agree that to suspend the parent involvement and Least Restrictive mandates, which are required by legislation and court order, would be the exact reverse of what is intended.

Received
8.5

Testimony on Public Law 94-142

August 4th, 1980

My name is Thomas M. Mentkowski. I have worked for the last two years as a teacher and counselor of the deaf for the last two years, and am hard of hearing. Despite my hearing loss, I attended schools for the hearing prior to college. I attended Gallaudet College, known as the world's only liberal arts college for the deaf. Thus, with experience in both spheres of education, I feel I am qualified to say a few words about PL 94-142.

The significance of PL94-142 just can't be questioned. It is quite a sarcastic thing to have Federal Laws mandating a free and appropriate education for its citizens, and yet have to enact a law which stipulates that handicapped children have a right to their education!

My personal experience has shown me that there are a lot of handicapped people unable to contribute to their society *only* because of their burden, yet of which they did not ask to be born with. Nothing is more joyous than receiving an appropriate education which leads to a self-sustaining lifestyle and paying taxes, along with not being a burden to society.

Mainstreaming? YES! It is one of the best things to happen to handicapped children in a long time. It only works when the child is *properly* evaluated and placed in an *appropriate* setting. It does not work for all handicapped persons. To evaluate a hearing impaired person for placement into a mainstreamed setting, their psychological, sociological, audiological, family, and peer backgrounds have to be evaluated and considered honestly. Too often, a child is mainstreamed only if there is enough money or if the evaluators give a dishonest opinion. A formula for consideration needs to be adopted along with PL94-142. I have seen too many of *my* friend's lives wasted...

If this committee needs information regarding mainstreaming, I would suggest they contact the National Association of the Deaf in Silver Spring, Maryland.

BILL ROYER
11th District, California
Washington Office:
1032 Longworth House Office Building
Washington, D.C. 20515
(202) [illegible]
Committees:
PUBLIC WORKS AND TRANSPORTATION
SCIENCE AND TECHNOLOGY

JUL 8 - 1980

Congress of the United States
House of Representatives
Washington, D.C. 20515

District Offices:
Bay View Plaza
2121 South El Camino Real, Suite 410
San Mateo, California 94403
(415) 349-1978
Daly City City Hall
90th and Sullivan Avenue
Daly City, California 94015
(415) [illegible] Ext. [illegible]

July 2, 1980

Honorable Jennings Randolph, Chairman
Subcommittee on the Handicapped
4230 Dirksen Bldg.
Washington, D.C. 20510

Received
Date [illegible] - 8 - 80
Subcommittee on
The Handicapped

Dear Chairman Randolph:

It is my understanding that you intend to schedule hearings regarding the implementation of PL 94-142. I ask that this letter be entered into the record of those proceedings.

I have received petitions bearing the signatures of 270 individuals involved in educational programs benefitting the handicapped in my district. Most of the members of this group feel that PL 94-142 is basically an excellent law. However, there appears to be unanimous displeasure with the implementation of the law.

The consensus of opinion among those who are responsible for attempting to make the various programs work is that implementation would be better served if left to local control. Apparently, the programs suffer, and the children who are supposed to benefit from the programs suffer, due to the deluge of unnecessary paperwork imposed upon teachers, counselors and administrators at the local level. Therefore, the individuals involved in special education programs for the handicapped at the local level in my district have proposed the following changes in implementation of the law, which they seek through amendments to PL 94-142:

1. That each Local Educational Agency be allowed to determine the most effective and efficient respective method of implementing the requirement for parental involvement to be included in phases of child referral, assessment, progress evaluation and dismissal.
2. That while testing remain an integral part of the programs, formal tests are to be administered at the discretion of the Local Educational Agency.

3. That all forms, records and program planning, as required by law, will be developed by the Local Educational Agency.

4. That the Local Educational Agency have flexibility relative to the composition of the annual review committee, the method used, and scheduling of the required annual review held for each child.

5. That the Local Educational Agency be responsible for monitoring and reviewing the implementation of the law as amended.

I ask that your committee give due consideration to the recommendations contained herein, for they come from those who are ultimately responsible for delivering the services to the children who need them.

Thank you for your consideration.

My best regards,

Bill Royer
BILL ROYER
Member of Congress

BR/mjb

Ms. Forsythe. The oversight hearings on the implementation of Public Law 94-142 will be continued in the near future. Administration witnesses will be invited so that they can provide us with their comments on the implementation of the law and on the testimony of the parents, teachers, administrators, State officials, and representatives of organizations that has been presented to our subcommittee thus far.

This meeting is adjourned subject to the call of the Chair.

Thank you.

[Whereupon, at 11:10 a.m., the subcommittee adjourned, subject to the call of the Chair.]

OVERSIGHT ON EDUCATION FOR ALL HANDICAPPED CHILDREN ACT, 1980

WEDNESDAY, SEPTEMBER 10, 1980

U.S. SENATE,
SUBCOMMITTEE ON THE HANDICAPPED,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 4232, Dirksen Senate Office Building, Senator Jennings Randolph (chairman of the subcommittee) presiding.

Present: Senators Randolph and Stafford.

Senator **RANDOLPH**. Good morning, ladies and gentlemen, and a special welcome to our witnesses.

At this time I think it is necessary for me to state for the record that the subcommittee members are disappointed that we did not receive the testimony from the Department of Education until late last evening. In accordance with the rules of the Senate, witnesses are asked to file written statements of the proposed testimony at least 24 hours before a hearing. I have been asked to bring this to the attention of the Department of Education.

The Department of Education was notified on July 31 of the date of this hearing and their invitation to appear before us this morning was issued on that date. This was followed by a letter which was hand carried to Secretary Hufstedler on August 11, 1980. On that same date copies of the letter to Secretary Hufstedler were delivered to both Martha Keyes, Assistant Secretary for Legislation, and to Edwin Martin, Assistant Secretary for Special Education and Rehabilitation Services.

It is most difficult to have a productive exchange with a witness if the members and staff of the subcommittee do not have ample time to read and analyze the testimony. It is my hope that this situation is brought to the attention of those responsible for preparing testimony in the Department of Education.

All of our questions will be presented in writing following the hearing in order to give the members of our subcommittee the time to review the presentation of the Department of Education.

I would be less than fair if I did not ask before we begin the hearing, Dr. Martin, if you want to make any comment on this? I am not asking you to.

Dr. **MARTIN**. Just an apology, Senator. Your position is absolutely right. I was disappointed that the Department did not get the testimony up to you in advance. There are a number of clearances and, for whatever reason, the process seemed to go more slowly than it should. I think we dropped the ball.

I apologize to you and members of the committee for the lateness in delivery of the testimony.

Senator RANDOLPH. I thank you very much. I often drop the ball, too, sir. I am not attempting to say that individuals and even agencies do not have difficulties. The time frames sometimes are very difficult.

Today is our 14th and final in this series of oversight hearings we have held in this 96th Congress. We have taken testimony from 143 witnesses, including parents; teachers; local, county and State administrators; representatives of national organizations; and other advocates for handicapped children.

Immediately following our last hearing on July 31, we notified the Department of Education that we would invite a representative of their Department to react to the concerns, issues and recommendations that were presented to us during these hearings. We wanted to give the Department ample time to review the testimony that had been presented to us in hope that when they appeared before this subcommittee they would present some alternatives or possible solutions to the issues that have been raised regarding the implementation of Public Law 94-142—the Education for All Handicapped Children Act.

I am pleased to welcome Dr. Edwin Martin and other representatives from the Department of Education to make that presentation this morning.

Dr. Martin, identify your colleagues to the left and right for the record?

STATEMENT OF EDWIN W. MARTIN, JR., ASSISTANT SECRETARY, OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, U.S. DEPARTMENT OF EDUCATION, ACCOMPANIED BY JAMES STEARNS, PERCY BATES, ROBERT HERMAN, ED SONTAG, SHIRLEY JONES, AND JERRY VLASAK

Dr. MARTIN. Thank you, sir. I am very pleased to have the opportunity to introduce to you some of the key staff people who are charged with the responsibility for helping implement the Education of the Handicapped Act. On my far left is Mr. Jim Stearns, who has just joined us as Deputy Assistant Secretary for External Affairs. Mr. Stearns is an attorney by training and has been with the General Services Administration and served as cochairperson of the National Advisory Committee on Developmental Disabilities. I might say he is already playing a key role with us by working on a variety of projects dealing with other governmental agencies. Next to me on my left is Dr. Percy Bates, formerly from the University of Michigan, where he was associate dean to your good friend, Wilbur Cohen, before he joined the administration. Percy is a specialist in the personnel training area. He serves as Deputy Assistant Secretary for the Office of Special Education, formerly the Bureau of Education for the Handicapped, which I headed.

On my right is Dr. Ed Sontag, a long-time staff member of the Bureau, who is now serving as Acting Director for the division which administers Public Law 94-142.

To his right is Mr. Robert Herman, who is my Deputy Assistant Secretary for Policy and Planning, and a long-time Associate

Deputy Commissioner for the Bureau of Education for the Handicapped.

In addition, I would like to introduce two other staff members to you. At the table is Mrs. Shirley Jones, our senior policy officer who carries the distinction of being both a speech pathologist and a lawyer. Also, here is Dr. Jerry Vlasak, who heads our compliance unit. One of the miracles, Mr. Chairman, of these first few months of the new Department of Education is that Mr. Stearns, Dr. Bates, and Mr. Herman, whom I have asked to be deputy assistant secretaries, were each my first choice of all the people in the country. Each was willing to accept. I feel very fortunate indeed that I was able to get that kind of response from people who are committed to the programs for education of the handicapped and for rehabilitation of the handicapped, fortunate that they would take on these important positions in the early days of the new Department.

Senator **Randolph**. Thank you very much. Some of these individuals that you have mentioned have been very helpful. They have been very knowledgeable as they have discussed matters with the subcommittee.

Dr. **Martin**. Mr. Chairman, I want to compliment you and members of the subcommittee on the very comprehensive hearings you have held reviewing progress on implementation of the Education of the Handicapped Act. We have followed the hearings very closely and have found the testimony very helpful.

I think you will be impressed with some of the analyses we have made. I recognize, Mr. Chairman, that this has been an enormous contribution of your time and that of Senator Stafford and of your colleagues. In my few years of experience here, running back 10 or 12 years, I do not recall the Congress ever having conducted such a comprehensive set of hearings and dedicating the time that you have day by day—14 hearings, I think you said—to this kind of careful oversight and scrutiny.

For those people in the audience who might read the record who do not understand fully what the meaning of that time commitment is, I would just like to say that my staff has found it extraordinarily helpful to have this record to analyze and to respond to. I want to congratulate you and your colleagues on really quite an unusual commitment, unique in my experience, to reviewing programs.

Senator **Randolph**. May I interrupt to say that we are all very conscious, of the very, very valuable services of those who staff our work and your work. I include Mrs. Forsythe in that. We speak of Mrs. Forsythe and all the staff with affection for the work that they do and the dedication and knowledge that they bring. I would like to include those who work for you and those who work here with us.

Dr. **Martin**. Thank you. That is most appropriate.

Public Law 94-142 created a commitment to the participation of disabled people in the public education system as a matter of national public policy. In its emphasis on a free appropriate public education in accord with an individual education program, Congress created a very enlightened public policy which is unique.

I have had the chance through UNESCO and other organizations to meet with special educators from around the world. I can tell you that there is no program similar to this and section 504 of the Rehabilitation Act in any other country to my knowledge. There are countries with excellent health and education programs, but none of them have made it so much an issue of public policy and basic, intrinsic rights. I think that is a premise which is uniquely consistent with the American constitutional ideals and gets us off, I think, to a tremendous start in this country.

As the Congress studied the need for legislation in the early 1970's, Federal and State courts considered cases brought by parents of handicapped children. The Bureau worked with agencies like the Education Commission of the States and the National Governors Association to change State law. All of this came together so that a number of States began to modify their laws and increase funding. Although a careful national census was never available before Public Law 94-142, there is little argument with the estimate that more than a million children have been added to special education rolls during the last 4 or 5 years; and 327,000 additional children have received services in the last 3 years, children who were not previously served. Making this growth more impressive is the fact that school enrollment has been declining rapidly during this period of time.

Had special education enrollment declined proportionately, we would be here today telling you that there are 300,000 fewer children on the rolls of special education; instead, about two-thirds of a million children have been added in proportion to the numbers of children that would have been expected. More than 4 million children are now benefiting from this national program.

Most people agree this growth would not have occurred without the Federal law, even though most States had laws mandating special education. These laws, while accomplishing considerable good, did not result in any State completely serving all disabled children. One index of the Federal law's impact is the frequency with which officials and occasionally editors, say the Federal Government wanted us to do this and so should pay for it. Since 49 States have mandatory laws, clearly this is primarily a State responsibility. The visible public attention and commitment associated with Public Law 94-142 and with section 504 of the Rehabilitation Act have resulted in people losing sight of the primacy of local and State responsibility.

Under President Carter, support for this law has grown from $250 million to a budget request of $922 million, now before the Congress. That is an increase of over $650 million during this last 4-year period. While the administration's commitment has been strong and will continue, the premise must remain that local and State governments must be the primary guarantors of the right to education.

In table I, you can see a State-by-State report on the numbers of children served, the sums distributed to each State for the current school year, and the percentage of enrollment.

Nationally—and I would like to point this out, Senator Randolph, because the subject is going to come up again in the testimony of the General Accounting Office next—handicapped children comprise 9.5 percent of enrollment. When Congress considered the bill, we testified that most special education experts considered that 10 to 12 percent of school-age children would require and should receive special education. For many years the figure of 10 percent has been in the literature of the United States and other countries. However, the growing recognition by the educators of the problems known as specific learning disabilities convinced the National Advisory Committee on the Handicapped, which was created by the Congress, to define and estimate the number of children in this category. It was estimated that an additional 1 to 3 percent of school-age children would be affected by such problems. This led us to revise the national estimate to 12 percent.

I would like to stop for a minute and look at the table with you and point out that about half the States now have more than 10-percent enrollment. For example, Alaska is reaching the 12-percent level; Delaware, over 13 percent; Illinois, over 12 percent; Maryland, over 12 percent; Massachusetts, over 13 percent; Missouri, 11.2[illegible] percent; New Jersey, 11.6 percent; and Senator Stafford's State, Vermont, 12.4 percent. In general, it seems very clear to me that——

Senator RANDOLPH. What is the trouble now with West Virginia?

Dr. MARTIN. Well, West Virginia is serving a smaller percentage of children, but we have seen very marked progress, as we reported to you, in the numbers of children served. The growth has been phenomenal. Also, there may be some State-to-State variation. There also are some differences depending on geographic areas. Areas with rural populations sometimes are harder to reach in as full a way.

Our feeling is that the progress in West Virginia, which, I think, is roughly a 50- or 75-percent increase in recent years, suggests that that will continue. In fact, our discussions with Dr. Keith Smith, Special Education Director, and others lead us to believe that they feel they will continue to make gradual progress in the numbers of children served in that State.

There has been some confusion, I might say. When we made the estimates for Congress in terms of total numbers of children served—which are a bit different than the current 4 million—it was all of the children between age zero and 21 we were talking about. Congress did not authorize a law that required education for all the children from zero to 21. It instead mandated education for school-age children, which is obviously a smaller population and therefore a smaller number of children to be served.

Second, as I mentioned, after the baby boom we have had a period of rapid decline in total enrollment. The estimates of numbers of children were approximately 12 percent of school-age population. And, as I pointed out to you, we still feel that is a very sound estimate which a number of States are now reaching or will surpass. Given some flexibility for community-to-community, State-to-State growth, we see no reason to modify our expectations in this regard.

I want to talk about some of the accomplishments under the act. The process of assuring each child an appropriate program and each parent an appropriate role has had a historic and dramatic impact. These things were not done, Senator, until you and your colleagues in the House passed this law.

More than 4 million children are receiving special education. Each child has an individual education plan. More children are receiving services like physical therapy and occupational therapy than ever before. More children are participating in physical education. More children are participating in the arts.

In all, there never has been a time when so many children have benefited from special education.

Some of the comments in your hearings, I think are better than the statistics. A State director of special education said that in their State they made more progress in upgrading and developing quality educational opportunities during the last 4 years than over the past 40 years. A college dean—who, it turns out, happens to be sitting next to me—reported progress in reducing overrepresentation of minority children in special education.

Teachers and parents reported the responses of children in moving terms to you. Some of the more moving things I have read were in those statements.

Senator **Randolph**. May I interrupt to say that we have had difficulty in some States in finding teachers who are equipped to do the job. Is that correct?

Dr. **Martin**. Yes, that is true. That is one of the major problems in the implementation of the law.

The chairman's State of West Virginia provides a good example. Officials there reported the growth in the number of professionals working with handicapped children from 400 to 2,200, more than a fivefold increase. The number of children served from 6,600 to 30,000 over the last decade, a fivefold increase. That is why I am not too concerned about West Virginia. If that progress continues, the State will achieve the right balance.

Senator **Randolph**. I think, from the standpoint of our State government, we are not only cognizant of the State participation but we are trying to supply necessary moneys at the State level. Is that right?

Dr. **Martin**. Yes, sir.

The progress inevitably includes an enormous growth in State funding because——

Senator **Randolph**. I remember in West Virginia we supplied funds for 200 teachers.

Dr. **Martin**. Your amendment, by the way, to the higher education——

Senator **Randolph**. And we could not find them; that is what I was saying. So, here is a problem.

Dr. **Martin**. Yes, it is a problem.

I might say that your amendment to the Higher Education Act, which provides additional resources for the training of teachers, may be helpful. But we already have authority under the law that gives us sufficient latitude, and we have made a major priority of this. We will continue to work with the States to train or retrain available manpower.

In a State like West Virginia and in a number of other States, the strategy is to work with residents of the State who have a commitment to provide special education services to the children in that State. It is difficult to expect people to move to all corners of every State to where the manpower supplies are needed. In fact, it is very difficult to find a job here in suburban Washington, but it is much easier if one would be willing to go into rural Virginia, rural Maryland, or into West Virginia to the rural areas. There they have trouble recruiting people.

The old idea that, if you train enough people, they will find their way to every corner of the country is not so. We are going to have to work with people who live in the areas, who have a commitment to the children of those areas, who are interested in handicapped children, and provide them with inservice training so that they can deal effectively with those children.

Senator Randolph. I remember one time when we were talking with the graduating class of West Virginia University Medical School. Many of those who were graduating were very frank in somewhat of a closed session. I said: "Well now, the State of West Virginia has invested money in your education; we need physicians, clinical people to go back into our hill country. Why are you not doing that?"

The answers varied. But I was rather surprised—and I am not trying to overdramatize it. One man very frankly said, "My wife won't go there. She wants to be where there are more cultural advantages." Well, cultural is a hard word to define sometimes. But he said, "I would like to do that, but I don't want to have a divorce in my family."

The rural areas of our country are often not as supportive as are urban areas of what we call cultural entertainment or programs of that kind. So, we have a problem, do we not?

Dr. Martin. And we recognize that. In no State have we been totally unyielding with regard to recognition of local problems. No State has been denied funds because they fail to serve a quota of children. No State has been turned down because they failed to meet an absolute number of personnel.

We have, however, continued to put a good deal of pressure on the States to meet the requirements of the law and to demonstrate progress in meeting general compliance with each of the important measures of the law.

I want to say this in relation to Senator Stafford's State. Vermont has more than doubled its services to handicapped children.

Another area of important progress is in services to preschool children. I know that your hearings raised the question of services to preschool children. Many of the children in this age range have received benefits under this act. Chairman Williams' State, New Jersey, reports it is now serving about 50 percent of the 12,000 children under 5 that they estimate require such services. In Washington State, more than 5,000 preschool children were part of a developmental screening program supported by the law.

I think it is very critical that in the future we expand this cost-beneficial and effective educational programing for preschool children.

I know Congress felt it was not appropriate to mandate such services, when the law was passed, and so the incentive grant program was enacted. However, all of the evidence we have, Senator, is that, if we could get our intervention to these young children in the first days of life when their disabilities first become apparent, we can sharply reduce the magnitude of disability for many children. We can increase their rate of development, their rate of language and speech, and of motor development. Then they will be more likely to be able to go to schools that are less intensively separating.

I think it is very, very critical that, as the Congress moves ahead in its thinking in this area, we continue to examine ways to increase the efforts for preschool children.

In every aspect of the law, people who have looked at the programs independent of the Government have found substantial improvement city by city, State by State. All third-party observers recognize essentially a reformation of education for the handicapped.

At the same time, I would like to be able to say to you that everything was working perfectly from the first day this massive law went into effect. I don't think anybody expected that logically. But emotionally there is a frustration when things don't work without flaw, particularly when you have high hopes and emotions as there are in this area.

This program has a major impact on the public, on teachers and parents. It is very central. You have had experience of having parents come before your committee over the years. You have had the experience of meeting with disabled people. You know the meaning and the intensity of this in their lives and that of their families. At the same time, the school officials are very interested in doing this job. They are under enormous pressure to do it immediately. There are problems of funding. There are problems of training of teachers.

There is an entire new commitment to involving parents in this process which did not exist before this law. So, there is a heightened sensitivity and tenderness, in a sense, to the expectations in this law. The hopes are very high. Even a few substantial disappointments are intensified in their concern.

There are 4 million children in this program. If 95 percent of the people involved were satisfied—a very high rate for any program, I would say, 95 percent satisfaction—that would still mean there would be 200,000 children with complaints of one kind or another nationally. So, it is inevitable that we are going to have a certain imperfection that is built into human accomplishment. Our job—one that we take very, very seriously—is to try and reduce those to the very, very minimum.

We have a table which analyzed the comments of witnesses before your committee, Senator, table II. I would like you to look at that for just a moment.

Table II is an analysis of the various witnesses' statements before your subcommittee, the areas that they identified as problem areas. It is just after page 5 of my prepared testimony. The chart indicates that parents and teachers and support personnel tended to concentrate on problems associated with the development of the individual education plan. For example, if you look in column 3 the individual education plan, you will see that 26 percent of parents, 50 percent of teachers, 60 percent of support personnel, a third of administrators, 22 percent of State administrators, all identified the individual education program as a problem area.

Local and State administrators tended also to emphasize local service problems, for example interagency agreements. You see this reflected in the question of related services, where among the administrators 80 percent, 50 percent, 78 percent mentioning this problem of related services. They also mention funding.

There is a diversity, in other words, in what these various groups before your committee emphasized as problems. The witnesses really differed by role. The administrators also tended to see the issue somewhat differently depending on their hierarchical level.

One of the things you notice is that the parents ordinarily report difficulty with a local school program. Their recommendations for action are at that level.

There is another graphic on the next page, which shows this. It shows the concerns that people had and the level at which they addressed the problem. You start here with parents. You see that they were concerned about the IEP; so were teachers and support personnel. They tended to address their problems to the local level. The local level tended to address their problems to the State. The State level addressed their problems to the executive branch.

You will notice that we are not trying to shift the problem to you. We think the law basically is a good law the way it is. It is our job to try and implement the act.

Senator **Randolph**. There have been problems with training.

Dr. **Martin**. That is true. That is exactly right. Each group mentioned training as a key area: training of parents, training of teachers, in-service training of teachers, training of administrators to understand the meaning of the law. It is a colossal problem.

There are over 3 million teachers employed right now. The question is how to develop a system that could possibly reach out to all 3 million of these teachers. It would be a massive job. No one before in the education field has ever really attempted to train all of the teachers in the country in this regard. Yet, it is not an unreasonable expectation here.

I might say, Mr. Chairman, that one of the unusual factors is this: most teachers do not have any training in special education. Neither do most principals and superintendents who were trained earlier. When they attended colleges of education, it simply was not required that a teacher have work in special education. There are some exceptions to that, but in general that is the case.

So, you have a school system filled with personnel who were not specifically trained to understand the problems of handicapped children and to deal with them. That, maybe more than anything else, tells you how far we have come with Public Law 94-142. Everyone agrees that should not be the case now. Everyone would like to see all these people retrained. We have made some tremendous efforts to get the colleges of education on a different format. We have worked with the deans of colleges of education to revise their curricula so this would not be true in the future.

We are training hundreds of thousands of teachers through in-service programs each year. But hundreds of thousands goes into several million very slowly indeed, and that is the problem.

As you can see, if we trained 100,000 teachers a year, it would take 30 years to train all the teachers that are out there already. So, it is a massive job to reach all these teachers.

There are 16,000 school districts. There are more than 100,000 school buildings. There are millions of teachers and children. No Federal compliance force can deal problem by problem in each locale across the Nation. We have got to develop a more effective system where most problems are quickly and satisfactorily resolved at the local level, where States can be involved in a vigorous compliance role, and where the Federal efforts involve better coordination between the Office of Special Education and the Office of Civil Rights, and clearer standards of what is expected of the local and State governments.

I think you can see this with a homely analogy. We have the 55-mile-an-hour speed limit Federal law. It has a useful purpose, to conserve energy and save lives. But, if local and State people would not be committed to enforcing it, then there really is no way that the Federal Government could be all over the country enforcing that Federal law. Essentially, we are trying to——

Senator RANDOLPH. In this campaign—and I speak not of one party or the other—there are those that want to abolish the 55-mile-an-hour speed law. So, whatever we place upon the Federal books, we know that along the way there will be opposition to it. Sometimes it rides out the rough roads; there are other times when it is lost along the way.

When you were talking about the responsibility of teachers within the State, I mentioned the concerns of the medical profession, but we can apply these concerns also to teachers. In the State of West Virginia, we provided for teachers a million dollars the first year if those teachers were going to utilize their training by staying there in that State and meeting those problems.

I want to make sure on that. If they do not stay in the State, the Federal funds that go to the State and then are used by teachers, that money will have to be repaid. That might be simplistic, but it is meeting a problem, is it not?

Dr. MARTIN. It does. In this mobile age I am sure it would catch a lot of people who move from State to State for economic reasons and other reasons from time to time.

It is part of a way of addressing this problem to try and create incentives for staying in a State——

Senator RANDOLPH. Do you think it is too rigid in our State if it is that way?

Dr. MARTIN. I don't know. I have not studied it. I just know that there are times when people move in a country for a variety of reasons: family reasons, two families working sometimes and one member can get a job and the other one cannot.

But the incentive notion, to try and have people stay in their own State, is important. We ought to find some ways to do that for at least the period of time that would be required to repay a Federal investment.

You can get good arguments on the other side. As I said, I have not really thought it through; but I do understand the issue. I also have heard some arguments for permitting people to go where they need to go, depending on both their interest and their will.

I think the tradeoff between support and commitment is a reasonable one. It worked in some of the bills you mention.

Senator **Randolph.** In West Virginia we are well pleased with the results. We found that, when a well-meaning individual knew that there was that commitment there within the State, they were really not concerned about it. They themselves are saying by letter and otherwise: we're glad we had the opportunity; we had to do this because now we find it is rewarding. I think that's right.

Dr. **Martin.** I think that goes back to what I suggested earlier. We feel the same way. You have to look for people who intend to be there and who want to be there and who have a commitment to the children there. You can work with them to retrain them or offer additional skills.

I am going to focus for a minute on the local nature of Public Law 94-142, Mr. Chairman. If a local committee decides that an individual education plan is appropriate for a child and the parents disagree, there is a local hearing with an impartial hearing officer and then a State-level hearing and, finally, possible recourse to the courts. The act did not contemplate the Office of Special Education officials deciding on the specifics of a child's IEP.

Only if there seems to be a systematic problem in the development of IEP's, for example, a consistent denial of certain services, would the Office of Special Education play a role. Or if there is a denial of due process itself. Here, the focus is on the State officials, requiring them to ensure the children's rights as established under the law. Many people do not make this same assumption. They instead assume that the system depends on direct Federal involvement case by case, complaint by complaint.

Case-by-case investigation of complaints of violations of section 504 of the Rehabilitation Act is a function and responsibility of the Office of Civil Rights under the *Adams* v. *California* court order and others. But even that large regionalized staff must depend on the cooperation of local officials and basic support for the law.

As a result of the first year's experience with the law, we see the need to improve Federal compliance activities, notwithstanding what I have just said about the fact that it must ultimately rest on local willingness and State willingness for the law to succeed. But there are serious problem areas. We have got to find more effective Federal actions that will help, that will create local and State cooperative attitudes, and that will enforce major aspects of the law.

Since the new Department has come together, it has given us a new opportunity to work with the Office of Civil Rights, in a variety of activities. Cynthia Brown, the Assistant Secretary for Civil Rights, and I are chairing a task force established by the Secretary. The report of this task force is due at the end of the month and will be made available to the subcommittee.

Work is progressing in four areas: data collection, enforcement, policy development, and technical assistance. In each of those areas we are making substantial progress to improve the way that the Department can enforce and administer Public Law 94-142 and section 504.

We are developing a mechanism for working with the Office of Civil Rights to share information and complaints in our compliance activities. We are developing a strategy for maintaining a more effective system of collecting data and using it. We will be using the Office of Civil Rights' data to launch investigations in States where there are discrepancies in their data suggesting that there may be an overrepresentation of children in minority groups in special education.

In the area of enforcement we are identifying priority issues for enforcement and working with the Office of General Counsel. We have improved the mechanism for coordination with the Department of Justice as well.

In the area of policy development, we are hard at work for the past several months to jointly generate new policies. We are very close to publication now in a number of areas—insurance proceeds, psychotherapy, catheterization of children with severe orthopedic handicaps, and various components of the IEP.

I expect these guidelines and regulations for the States to be forthcoming in the near future.

We also are going to be publishing for the States a list of policy issues we are considering so that they will know what we are thinking about, and they will have the full opportunity to participate in this development process.

We also are trying to increase the amount of technical assistance to teachers, parents, and others in understanding the law and its requirements. Finally, there are two areas mentioned in your hearing record which deserve I think, specific attention. One is training, and the other is IEP's. Using our discretionary funds, we are now putting tremendous emphasis on in-service training. As I mentioned earlier, of the 123,000 teachers we will train this year, 83,000 will be in this group who are already working.

We have made a series of grants to deans of colleges of education to revise the undergraduate curriculums so that all teachers will have a better approach to educating handicapped children: more confidence in their abilities, more knowledge in what is required.

It is important to encourage States to take a more active role in this. We have roughly $30 million targeted for inservice training in our discretionary program of about $58 million. The States have at their disposal more than $200 million because they get 25 percent of the total $800-plus million available this year over which they can exercise discretion. They usually distribute this for services to children, but it does provide a major opportunity for States to use those funds or some portion of them for additional training.

Obviously, the $200 million is a much bigger pot of money to address this need than the $30 million that is available to us. So, increasingly in recent years we find the States using their discretionary funds under Public Law 94-142 to support inservice training. Also, local agencies can do this with the money that comes to them, and many of them have now begun to start inservice training programs. So, there is quite an upswing.

We cannot order the States to use the funds that way, but we are doing the best we can to put a major emphasis on the issue. This is being done as part of the comprehensive planning for personnel development that is required by the law.

The individual education planning process is critical, I believe, to the success of this law. For many years educators, administrators, and professors have preached about this. I am sure you have heard many times, Mr. Chairman, about the need to provide an individual approach to each child. In this law the Congress has provided to us, in a sense, the opportunity to practice what we preach. I think it is an excellent idea. I believe most people think it is an excellent idea. I know you have heard some testimony suggesting that it is not a good idea, but I find almost no support for that position; and certainly we do not support it.

We believe strongly that the education system should encourage more rather than less parental involvement. We think the bond should be stronger between teachers and parents, not just because the education would be better but because the school system, frankly, needs to make that kind of partnership to insure its survival as a public education system.

We think most parents feel very positively toward the IEP process. You have had testimony from citizens groups recommending its increase, and suggestions to the contrary are not ones that we support.

Senator RANDOLPH. On that one point, I recall the mother of two handicapped children who testified before the subcommittee. I think she was talking about our inept evaluation process; that is what she was saying an IEP stood for. She told us of her son who had had not one, two, or three, but four evaluations. Each evaluation committee had characterized the recommendations of the preceding committee as misinformed, inaccurate, and whatever words you want to use.

Do you think that is a situation that is common or is that an isolated case?

Dr. MARTIN. Do I think that is a common situation?

Senator RANDOLPH. Yes.

Dr. MARTIN. I think it is a very small minority, but a substantial minority and one that deserves additional attention.

It goes back to the earlier remarks in my prepared statement. We have come up to a level where we have 4 million children in this system. Schools are doing things they have never done before. They are facing responsibilities they have never faced before.

The reason that you and your colleagues passed this law is because the system was not working very well. The system is now working a whole lot better than it used to work. It is working better than it ever has in the history of the country. But it is not working perfectly yet. There is no question in my mind but that, even though local people are doing their best, at certain times they do not have the most qualified staff. At certain times they make mistakes. In some instances they may be trying to patch together an effort that is not fully comprehensive.

But the law does try to provide some remedies to the parents in appealing those instances, in turning to outside evaluations that must be provided to them if they call for an outside evaluation. I think it is very, very painful to have a parent come and tell you that. I think there are undoubtedly still places in the United States where the functioning system is not as strong as it will be a few years from now.

I think the largest number seem to be doing much better.

Senator RANDOLPH. This mother was not from my hometown of Elkins of 10,000; she was from New York City. So, as you indicated, it can be a problem, of course.

Dr. **Martin**. They have had an enormous problem in New York City; it is a matter of public record. There are thousands of children that have been waiting for assessment. Both the Office of Civil Rights and we have been involved with the Justice Department in submitting an amicus brief on behalf of parents trying to bring additional relief to that situation. It is one of a number of court cases over the country where the Department of Justice has played an amicus role on behalf of the United States.

I do not mean to criticize New York. These big cities have tremendous problems, as you well know, complicated by the financing problem in general. But the fact is that there is a lot of progress that will be necessary.

We have had fairly close contact with the superintendent of schools in New York. We know he is committed to doing something about this. We are trying to help him by providing assistance in training of teachers and developing more teams. It is a serious problem. It is one that has resulted in several court suits. We are involved in almost all of them.

Senator **Randolph**. I recall that during our hearings—this is a concern that goes across the board; it is not in any particular area, but it is related. There are some handicapped children who are being placed in regular classes without the necessary supportive services. I guess it occurs because of a misinterpretation of the least restrictive environment concept. I presume that to be true.

Dr. **Martin**. Yes.

Senator **Randolph**. What has the OSE done about addressing this problem?

Dr. **Martin**. There are two kinds of errors that are occurring across the country. The one that you mentioned, is that some children who are mainstreamed who may not get sufficient intensity of instruction. The other is that there are some children who should be mainstreamed who may be unnecessarily separated.

We have been trying to go into each State and unfortunately, I do not think we can go into those States as frequently as we should. We visit about half of them each year. I would very much like to be able to increase that. We then go into school districts, and we look at the processes that go on there. When we find those processes are in error, we require a number of corrective actions.

I think the long-range solution to the problem, again, is having available the resources to do the job, both human resources and financial resources. The pressures that result in children not being placed correctly, for the most part, are errors in judgment at the local level. A local placement committee decides this child can benefit and puts the child there. Some people say: well, they may make that decision because they feel it is a cheaper placement. Other times, the local placement committee feels that no child can be educated well unless he is or she is in a special school.

I think, Mr. Chairman, basically we are in a situation where, as this system improves, as the local placement committees become more sophisticated in their work as they are better trained, they will tend to make fewer of these errors of judgment about a given child's placement.

The procedure calls for a local correction.

Senator **Randolph**. Dr. Martin, this is a generalization, I realize. I think that—I cannot speak for Senator Stafford—any of us who are here on the Hill, from the standpoint of the legislative process carried on to our States in projects and programs, we have come, at least I have, to realize the best place to lodge responsbility is at the local level. Sometimes it is not easy to do that.

Dr. **Martin**. Yes, that is right.

Senator **Randolph**. I think with so many of our programs, we look too much to Washington for the answers. There are those really informed individuals who are facing these problems on the frontlines there, but sometimes they are a little loath to speak because they think they may be overruled or something.

Dr. **Martin**. That is absolutely true. Both teachers and parents have told me that they are afraid sometimes to make recommendations they feel might get them in trouble with school officials.

This is the paradox that my testimony, in a sense, presents to you this morning. I am convinced that improvement at the local level is what the act is bringing about. Improvement at the local level will be required in order to resolve these problems. It is a local placement committee. It is a local decision. There are local appeals.

At the same time, the Federal Government has to do better. One way we can do better, I think, in this area is to provide better guidance to the States and to the locals.

We are now working on a policy paper about the least restrictive environment area. We have recently published a very comprehensive paper. I will be pleased to make it available for the record. It is on the individual education program. That, I believe, will go a long way to giving districts guidance from the Federal Government suggesting what will be necessary to do a good job.

By the end of this year we should have another paper out on the least restrictive environment.

It is a serious matter. By the way, one of the most wonderful anecdotes in your hearing record that I saw about the least restrictive environment comes from a youngster who had been in a special school or class and whose mother testified. She evidently said to the youngster one day: "How do you like this new setting you're in? Wouldn't you rather be back in the school you used to be in where all the children are just like you?" And the daughter said: "The children are just like me in this new school except they're not deaf."

I thought that was one of the most marvelous insights into what the whole question of what least restrictive environment is all about. It is where I hope we can go in this activity.

Mr. Chairman, I think that we can reduce some of the burden that teachers have talked about in regard to the individual education plan as well. We have found variety in individual education plans through a national sampling. If you look at figure 2, you will see that we have analyzed the length of various individual education plans ranging from 1 page in length to 47 pages in length. Sixty percent of them, however, were four pages in length or less. The largest single group were two pages in length.

What the study indicated to us is that length is not basically a function of Federal requirements. Instead, it is very directly a product of local decisions as to how best to implement those requirements.

In some instances, local people feel or have been instructed by their own superiors that they are doing what the Federal Government wants. But the fact is that a careful analysis of these IEP's indicates that the minimum requirements by the Congress and by the regulations of the Federal Government can be handled in a very small number of pages. Some of the longer IEP's are very helpful. I do not mean to criticize them. It seems to me it is the right of local administrators to try and make these as comprehensive a document as they want.

We have felt the need to point out to State and local administrators that the range of these is pretty much a function of the local program. The paper that I will submit for the record emphasizes what the minimum requirements of the law are. Even those are sometimes not met.

[The paper referred to follows:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

May 23, 1980

DRAFT

Our Reference: DAS Information Bulletin #64

INFORMAL LETTER TO STATE DIRECTORS OF SPECIAL EDUCATION, STATE PART B COORDINATORS, AND STATE P.L. 89-313 COORDINATORS

Subject: Final Draft Policy Paper on Individualized Education Programs (IEPs)

Attached is a copy of the final draft of the policy clarification paper on the IEP requirement under P.L. 94-142. This paper is being submitted for clearance and publication in the Federal Register.

We received nearly 100 letters of comment on the draft paper that was disseminated on November 5, 1979. All of the comments were reviewed and considered in developing this final draft paper; and a substantial number of changes have been made in response to these comments.

We hope that you will find the attached paper to be helpful in administering the IEP requirement in your State. If you have questions or comments about the paper, please contact: Thomas B. Irvin, OSE/DAS, Donohoe Building, Room 4046, 400 Maryland Avenue, S.W., Washington, D.C. 20202. (Telephone: (202) 472-4825)

Sincerely,

Garry L. McDaniels
Director
Division of Assistance to States
Office of Special Education
and Rehabilitation Services

cc: Chief State School Officers

ED/ASSERS/OSE MAY 23, 1980

DRAFT

INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)

PART B,

EDUCATION OF THE HANDICAPPED ACT,

AS AMENDED BY P.L. 94-142

OSE POLICY PAPER

U.S. EDUCATION DEPARTMENT
ASSISTANT SECRETARY FOR SPECIAL EDUCATION
AND
REHABILITATION SERVICES
OFFICE OF SPECIAL EDUCATION

CONTENTS

DRAFT

(Page)

I. Introduction 1

II. Purpose of the IEP Requirement 3

III. IEP Requirements (& Questions to be Addressed in Paper) 4

§ 121a.340 Definition 4

.341 SEA Responsibility 4
  1. Who writes IEPs for a child served by other than SEA? 4
  2. Who writes IEPs for a child placed out of State? 6

.342 When IEPs must be in effect 7
  1. What is the meaning of the term "be in effect?" 7
  2. How much delay is permissible between writing the IEP & serving the child? 8
  3. When must IEPs be written--Before/after placement? 8
  4. If a child moves to a new LEA, must the LEA hold an IEP meeting before providing special education? 9

.343 Meetings 9
  1. Is there authority to write IEPs 30 days after placement? 9
  2. Must "eligibility staffings" be separate from IEP meetings? 10
  3. Must IEPs be reviewed/revised at the beginning of each school year? 10
  4. How frequently must IEP meetings be held? 11
  5. Can IEP meetings be initiated at the request of the parents? 11
  6. Can IEP meetings be initiated at the request of the child's special education teacher? 11

.344 Participants in meetings 11

(Agency Representative)

  1. Who can serve as the "agency representative? 11
  2. Who is the representative for a child served by a public agency other than the SEA or LEA? 12

(The Child's Teacher)

  3. For a child being considered for initial placement, what teacher should attend the IEP meeting? 13
  4. If a child is enrolled in both regular & special classes, which teacher should attend the IEP meeting? 13
  5. If a student is in high school, should all of his/her regular teachers attend the IEP meeting? 13
  6. If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting? 14
  7. If a child is in a special class & is also served by a speech-language pathologist, should both specialists attend the IEP meeting? 14
  8. Can teacher union reps. attend IEP meetings? 14

(The Child; Parents; Other Individuals)

  9. When may a handicapped child attend an IEP meeting? 15
  10. Are the parents precluded from attending IEP meetings when the student reaches the age of majority? 15
  11. Do related services pers. have a role at IEP meetings? 16

12. Are agencies required to use "case managers?" 16
13. Who is the evaluation person for speech impaired? 17

.345 Parent Participation

1. What is the role of the parents at an IEP meeting? 18
2. What is the role of a surrogate parent at the meeting? 18
3. Must the agency let parents know who will be attending? 19
4. Are parents required to sign IEPs? 19
5. Does a signed IEP indicate consent for placement? 19

.346 Content of IEP 20

(Present Levels of Ed. Performance)

1. What should be included under "present levels of educational performance?" 20

(Annual Goals & Short Term Objectives)

2. Why are goals and objectives required in the IEP? 21
3. What are annual goals, as used in the IEP requirement? 21
4. What is the meaning of "short term inst. objs?" 22
5. Is there a relationship between IEP objectives & those in instructional plans? 23
6. Should the IEP include objectives of regular teachers? 23
7. When must objs. be written-before/after placement? 23
8. Can objs. be changed without holding another IEP meeting? 24

(Specific Special Education & Related Services)

9. Does IEP list services needed or those available? 24
10. Is the IEP a commitment to provide services? 25
11. Must the agency provide services directly to the child? 25
12. Does the IEP include only Sp. Ed. & related services 25
13. Must PE be included in every child's IEP? 26
14. Must vocational education services be listed? 28
15. Must the IEP specify the extent/amount of services? 28

(Projected Dates/Evaluation)

16. Can the anticipated duration be projected for more than one calendar year? 29
17. Must "evaluation procedures and schedules" be included as a seperate item in the IEP? 29

(Other "Content" Questions)

18. Is it permissible for the agency to have a completed IEP when the meeting begins? 29
19. Is there a prescribed format or length for IEPs? 30
20. Is it permissible to integrate the IEP with other indiv. service plans (e.g., Medicaid)? 30
21. Is the IEP subject to the confidentially requirements under P.L. 94-142? 30

.347 Private School Placements 31
If placement decisions are made at the IEP meeting, how can a pvt. sch rep. be in attendance? 31

.348 Handicapped children in parochial or other private schools 32

.349 IEP--Accountability (Is the IEP a performance contract?) 33

ED/ASSERS/OSE

May 23, 1980

DRAFT

INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)

Restatement & Interpretation of Requirements Under
Part B of the EHA, As Amended by P.L. 94-142

I. Introduction

A. Background. During the Fall of 1979, the Bureau of Education for the Handicapped (BEH) (Now called the Office of Special Education (OSE)) prepared a draft policy clarification paper on the IEP requirement under P.L. 94-142. The paper was written to respond to policy issues and concerns which had been raised during the first two years of implementing the regulations under P.L. 94-142. Many of the issues were raised during a series of public input meetings on the law conducted during the summer of 1979.

The nearly 500 participants who attended these public input meetings included national representatives and their State and regional counterparts from 60 National associations interested in the education of handicapped children. Four main categories of participants attended these meetings, including (1) parents and advocates, (2) teachers, (3) regular and special education administrators, and (4) related services providers.

During August and September, input papers were submitted by individual members of BEH's Ad Hoc Task Force on IEPs. These papers, together with the comments received during the public input meetings, served as the basis for the draft paper.

The draft paper was disseminated in November, 1979 to State educational agencies and to all of the participants who attended the public input meetings. Nearly one hundred written comments were received on the draft paper, including letters from persons in all of the above categories of participants. All of the letters were reviewed and considered by BEH in preparing this final draft policy paper.

B. Purpose & Overview of the Paper. A major purpose of this paper is to clarify what requirements must be met in order for public agencies to be in compliance with the IEP provisions in the Act and regulations.

Experience gained over the past two years in administering P.L. 94-142 indicates that some of the wording in the law and regulations has been interpreted in many different ways by individual agencies at the State and local level. In addition, a number of new implementation questions have been raised regarding the IEP requirements, which were not addressed in the final regulations. Given these new questions, and the fact that the existing IEP provisions are being interpreted differently by individual agencies, the Office of Special Education feels that it is appropriate at this time to: (1) restate the basic Federal requirements, (2) provide clarification on any specific requirement where experience indicates that a more precise interpretation is needed, and (3) answer some of the major new implementation questions that have been raised.

Part II of this paper sets out the major purposes and functions of the IEP requirement for Federal compliance purposes. Part III is essentially a restatement of the regulations on IEPs (§§121a.340-121a.349), together with additional clarifying information.

C. *Effect of policy paper*. This policy clarification paper provides two basic kinds of information: (1) the essential IEP requirements that must be met in order for public agencies to be in compliance with the Act and regulations, and (2) suggestions and guidelines for use by agencies in implementing some of the key requirements.

In effect, the paper is an extension of the final reguations under P.L. 94-142. Thus, the interpretations included in the paper will be followed by the Office of Special Education in enforcing compliance with the law.

DRAFT

II. Purpose of the IEP Requirement

The IEP provision in the Act and regulations has two main parts (A) the IEP meeting(s) - at which parents and school personnel jointly make decisions about a handicapped child's "program," and (B) the IEP document itself - which is a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions, as set out below:

1. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be.

2. The IEP itself serves as the focal point for resolving any differences between the parents and the school; first through the meeting and second, if necessary, through the procedural protections that are available to the parents.

3. The IEP sets forth in writing a commitment of resources necessary to enable a handicapped child to receive needed special education and related services.

4. The IEP is a management tool that is used to insure that each handicapped child is provided special education and related services appropriate to his/her special learning needs.

5. The IEP is a compliance/monitoring document which may be used by monitoring personnel from each governmental level to determine whether a handicapped child is actually receiving the free appropriate public education agreed to by the parents and the school.

6. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes. (NOTE: The law does not require that teachers or other school personnel be held accountable if a handicapped child does not achieve the goals and objectives set forth in his/her IEP. See § 121a.349.)

III. IEP Requirements

This part (1) lists the basic IEP requirements in Sections 121a.340-121a.349 of the regulations (Boxed material), (2) provides additional clarifications, as necessary, on any section of the regulations (or paragraph and sub-paragraph of a section) where a more precise interpretation in needed, and (3) answers some of the key implementation questions that have been raised regarding the IEP requirements, which were not addressed in the final regulations. The clarifying information and implementation questions are presented in a question and answer format, and are included immediately after the specific section, paragraph, or sub-paragraph that is being addressed. (NOTE: The questions are numbered separately for each section.)

INDIVIDUALIZED EDUCATION PROGRAMS

§ 121a.340 Definition.

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with §§ 121a.341-121a.349.

(20 U.S.C. 1401(19).)

§ 121a.341 State educational agency responsibility.

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

1. Who is responsible for writing IEPs for a handicapped child served by a public agency other than the SEA or LEA?

The answer will vary from State to State, depending upon State law, policy, or practice. It also depends, in part, upon which agency initiates the placement and which agency is responsible for the education of the child.

DRAFT

In all States, however, the SEA is ultimately responsible for insuring that each public agency in the State is in compliance with the IEP requirements and the other provisions of P.L. 94-142. (See § 121a.600.) (NOTE: Section 121a.2 states that the requirements in the Act and regulations apply to all political subdivisions of the State that are involved in the education of handicapped children, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for the deaf or blind), and (4) State corrections facilities.)

The SEA must insure that every handicapped child in the State receives a free appropriate public education (FAPE) regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to accomplish this (e.g., through interagency agreements, etc.), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

The following paragraphs define (1) some of the SEA's reponsibilities for developing policies or agreements under a variety of interagency situations and (2) what some of the responsibilities are for an LEA when it initiates the placement of a handicapped child in a school or program under another State agency:

a. SEA POLICIES OR INTERAGENCY AGREEMENTS. The SEA, through its written policies or agreements, must pinpoint who is responsible for writing and implementing IEPs under each interagency situation that is applicable in the State, including any of the following: (1) when an LEA initiates the placement of a child in a school or program under another State agency, (See "LEA Initiated Placements" on page 6.), (2) when another State agency places a child in a residential facility or other program, (3) parent-initiated placements in public institutions, and (4) placements by the courts in corrections facilities. (NOTE: This is not an exhaustive list. The SEA's policies must include any other interagency situation that is applicable in the State; and the policies must cover placements that are made for both educational and non-educational purposes.)

   There is often more than one agency involved in writing or implementing a handicapped child's IEP (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services; or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency that is involved in the above situations, in order to offset any jurisdictional problems which might occur that could result in delaying the provision of a free appropriate public education to a handicapped child.

Therefore, for each interagency situation applicable in the State, the SEA must insure (1) that its policies or agreements define the role of any agency that is involved in writing or implementing a handicapped child's IEP (e.g., the child LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located), and (2) that it is clear which agency is responsible for the child's education and for providing (or paying for) the special education and related services to the child.

NOTE: The SEA also must insure that any agency involved in the education of a handicapped child is in compliance with the least restrictive environment provision in the Act and regulations, and specifically the requirement that each handicapped child's placement (a) is determined at least annually, (b) is based on his or her IEP, and (c) is as close as possible to the child's home. (§ 121a.552(a))

b. LEA INITIATED PLACEMENTS. When an LEA is responsible for the education of a handicapped child, the LEA is also responsible for writing the child's IEP. The LEA has this responsibility even if development of the IEP results in a placement in a State-operated school or program. Since the IEP must set out the specific special education and related services to be provided, which includes placement, the IEP would have to be developed before the child is placed. When placement in a State-operated school is appropriate, the affected State agency or agencies would have to be involved by the LEA in the development of the IEP.

After the child enters the State school, any meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, as a general rule, both agencies would jointly be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision made (based on State law) regarding whether responsibility for the child's education had been transferred to the State school or remains with the LEA, since this determines which agency is responsible for reviewing or revising the child's IEP.

2. Who is responsible for writing IEPs for a handicapped child placed out of State by a public agency?

The "placing" State is responsible for writing the child's IEP and insuring that it is implemented. The determination of the specific agency in the State that is responsible for the child's IEP would usually be based on State law, policy, or practice. However, as indicated earlier, the SEA must insure (1) that the responsible agency is identified, and (2) that the child receives a free appropriate public education.

Any responsibilities of the "receiving" State and its effected public agencies, in terms of implementing the child's IEP, would be specified in an agreement between the appropriate agencies within the two States.

DRAFT

§ 121a.341 SEA Responsibility—Continued

(b) *Private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(20 U.S.C. 1412 (4), (6); 1413(a)(4).)

Comment: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

§ 121a.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 121a.343.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, Sec. 8(c) (1975).)

Comment, Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under § 121a.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

1. In requiring that an IEP must be in effect before special education and related services are provided, what does "be in effect" mean?

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed at a meeting(s) involving all of the participants indicated in the Act (parent, teacher, agency representative and, the child, where appropriate), (2) is less than one calendar year old, (3) is regarded by both the parents and school personnel as being appropriate in terms of the child's needs, projected outcomes, and services that are specified, and (4) will be implemented as written.

2. How much of a delay is permissible between the time a handicapped child's IEP is written and when special education is provided?

In general, it is not permissible to have any delay. It is expected that the special education and related services set out in a child's IEP will be provided by the agency immediately after the IEP meeting.

The comment following Section 121a.342 identifies some exceptions (e.g., (1) when the meetings occur during the summer or a vacation period; or (2) when there are circumstances which require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided within a few days following the meeting.

3. For a handicapped child entering special education for the first time, when must an IEP be written--before placement or after placement?

The IEP must be finalized before placement. Section 121a.342(b) states that an IEP must "Be in effect before special education and related services are provided to the child." (Emphasis added.) The appropriate placement for a given handicapped child cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to first place the child and then develop the IEP.

The above requirement does not preclude temporarily placing a child in a program as part of the evaluation process--before the IEP is finalized--to aid in determining the appropriate placement. When a "trial placement" is considered to be necessary for an individual child, the placement must be made in accordance with the following:

a. There must be an "interim" IEP developed for the child, which sets out the specific conditions and timelines for the trial placement. (See "c" following.)

b. The parents must agree to the placement before it is carried out, and be involved throughout the process of developing, reviewing, and revising the child's IEP.

c. A specific timeline must be set for completing the evaluation and making judgments about the most appropriate placement for the child. (NOTE: It is expected that these activities will be completed within a 30 day time period.)

d. At the end of the trial period, a meeting must be conducted to finalize the child's IEP.

NOTE: Once a handicapped child is placed in a special education program, the teacher might develop lesson plans or more detailed objectives based on the IEP; however, such plans and objectives are not required and would not be a part of the IEP itself. (Questions and answers about IEP goals and objectives are included later in this paper, under §121a.346(b).)

4. If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

Yes. Before the child begins receiving special education and related services, the new LEA must conduct an IEP meeting. At the meeting, the parents and school personnel would (1) review the the child's former placement and school records, and (2) revise the child's IEP, where necessary. (NOTE: If the child's previous IEP is not available, a new IEP would have to be developed.) The meeting should take place within one week after the parents enroll the child in the new LEA; and the child must be placed in a special education program immediately after the IEP is written. (See answer to question No. 2, above.)

If the LEA or the parents feel that additional information is needed before a final placement decision can be made (e.g., the need to receive and review the school records from the former LEA, or the need for a new evaluation), it would be permissible to "temporarily" place the child in a program before the IEP is finalized. (See conditions for such placements in the answer to question No. 3, above.)

> **§ 121a.343 Meetings.**
>
> (a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.
>
> (b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977-1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.
>
> (c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

1. Does paragraph (c) of Section 121a.343 authorize a public agency to delay the development of a handicapped child's IEP for a period of up to 30 days following placement?

No. The 30 day timeline in Section 121a.343(c) was written to insure that there would not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child is handicapped, the public agency has up to 30 days to hold an IEP meeting; and the child must be "placed" immediately after the meeting. (See question No. 2 under §121a.342.) Thus, as previously stated, the IEP must be finalized before placement.

2. Must the "multidisciplinary team" hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

This is a State or local decision. Some agencies hold separate "eligibility staffings" with the multidisciplinary team before the IEP meeting. (NOTE: When separate meetings are conducted, placement decisions would be made at the IEP meeting.) Other agencies combine the two steps into one process. If a combined meeting is conducted, the public agency must insure that the parents are included as participants at the meeting. (See §121a.345 for requirements on parent participation.) In addition, while not required under the Act, it is recommended that agencies involve parents in the separate eligibility staffings whenever possible.

NOTE: If, at a separate eligibility staffing, a decision is made that a child is NOT eligible for special education, the parents must be notfied about the decision.

§ 121a.343 Meetings—Continued

(d) *Review*. Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in § 121a.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in § 121a.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

3. Must IEPs be reviewed or revised at the beginning of each school year?

No. The basic requirement in the regulations is that IEPs must be in effect at the beginning of each school year. (See questtion No. 1 under §121a.342.) Meetings must be conducted at least once each calendar year to review or revise each handicapped child's IEP. However, the meetings may be held anytime throughout the year, including (a) at the end of each school year, (b) during the summer, before the new school year begins, or (c) on the anniversary date of the last IEP meeting on the child.

4. How frequently must IEP meetings be held?

The regulations state that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history makes it clear that there should be as many meetings a year as any one child may need. (Congressional Record, Senate—November 19, 1975, Mr. Stafford, pp 40428—29.) Moreover, agencies must allow sufficient time at the meetings to insure meaningful parent participation.

5. Can IEP meetings be initiated at the request of the parents?

Yes. See (a) question No. 4 under "Parent participation (§121a.345), (b) question No. 8 under "Content of IEP" (§121a.346), and (c) the comment following Section 121a.349 (IEP—accountability).

6. Can IEP meetings be initiated at the request of the child's special education teacher?

Special education teachers are the main implementers of IEPs and are in the best position to determine whether a given handicapped child is or is not progressing in accordance with his/her "program." If a teacher feels that a child's placement or IEP services are not appropriate to the child, it is expected that the teacher would, in accordance with agency procedures, (1) call or meet with the parents and/or (2) request the agency to hold another meeting to review the child's current IEP.

> **§ 121a.344 Participants in meetings.**
>
> (a) *General.* The public agency shall insure that each meeting includes the following participants:
>
> (1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

1. Who can serve as the "agency representative" at an IEP meeting?

The "agency representative" could be any member of the school staff, other than child's teacher, who is "qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children." (Sec. 602(19) of the Act) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide or supervise special education.

The determination of which specific staff member should serve as agency representative is left to discretion of the individual state or agency or school. However, the following points should be considered in such a determination:

a. A first consideration in selecting the agency representative is the need to insure that whatever services are agreed upon at the meeting will actually be provided and the IEP will not be "vetoed" at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particualr child).

b. A second consideration might be related to the nature and severity of a child's handicap and the amount of services he/she requires. For children with less severe handicaps (e.g., a mild learning disability or a mild speech impairment), where only a limited amount of special education is required, the agency representative could be a special education teacher or a speech-language pathologist, other than the child's teacher. However, for children with more severe disabilities, who require extensive special education and related services, the agency representative might be a key administrator in the agency.

NOTE: IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

2. Who is the "agency representative" for a handicapped child who is served by a public agency other than the SEA or LEA?

The answer depends upon individual State law, policy, or practice. It also might depend upon any one or all of the following: Who is responsible for (a) the child's education, (b) for placing the child and (c) for providing (or paying for) special education and related services to the child.

NOTE: In the following situation, the answer is more specific: If a state agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of that staff would be the agency representative at the IEP meetings. Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

§ 121a.344 Participants in meetings. (Cont'd)

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(2) The child's teacher.

DRAFT

3. For a handicapped child being considered for initial placement in special education, what teacher should attend the IEP meeting?

The "teacher" could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, and/or (2) the child's regular teacher. In any event, there should be at least one member of the school staff at the meeting who is qualified in the child's area of suspected disability.

NOTE: Sometimes more than one meeting is necessary in order to finalize a child's IEP. If in this process, the teacher who will be working with the child is identified, it would be useful to have the teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should insure that the teacher (i.e., the "receiving" special education teacher) is given a copy of the child's IEP as soon as possible after the meeting(s) and before the teacher begins working with the child.

4. If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

The special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should insure that he/she either receives a copy of the IEP or is informed about its contents. Moreover, the agency should insure that the special education teacher or other appropriate support person is able, where necessary, to consult with and be a resource to the child's regular teacher.

5. If a handicapped child in high school attends several regular classes, should all of the child's regular teachers attend the IEP meeting?

This is a State or local decision. However, the following are some points to be considered in making the decision:

a. Generally, the number of participants at IEP meetings should be small. Holding small meetings has several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive. (NOTE: In an informal examination of IEPs from five states, BEH staff found that, on the average, IEP meetings were attended by four persons.)

b. While large meetings are generally inappropriate, there may be specific circumstances where additional participants are essential. The regulations authorize the attendance of other participants at the discretion of the agency or parents. (§121a.344(a)(5). When the participation of the regular teachers is considered by the agency or the parents to be essential to the child's success in school (e.g., in terms of his/her participation in the regular education program), it would be appropriate for them to attend as "other participants." Usually, the need for such attendance is greater for children with severe handicaps.

c. While the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, or (2) receive a copy of the IEP itself. Moreover, as mentioned earlier, the agency should insure that the special education teacher is able, where necessary, to consult with, and be a resource to, the child's regular teachers. (See question No. 6 under § 121a.346(b) regarding goals and objectives in the IEP.)

6. If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?

No. A speech-language pathologist would usually serve as the child's "teacher." The regular teacher could attend at the option of the school. However, some member of the "IEP team" must be a qualified speech-language pathologist.

7. If a child is enrolled in a special education class because of a primary handicap and also receives speech-language pathology services, should both specialists attend the IEP meeting?

In general the answer is yes. The special education teacher must attend the meeting. The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

8. Can representatives of teacher unions attend IEP meetings?

No. Under the Family Educational Rights and Privacy Act (FERPA), union officials cannot attend IEP meetings if student records are discussed—except with the written consent of the parents. Moreover, even if student records are not involved, P.L. 94-142 does not allow for the participation of union officials at IEP meetings. The legislative history of the Act makes it clear that IEP meetings should be confined to those persons who have an intense interest in a particular child. Thus, since union involvement is intended to protect the interests of the teacher rather than the interests of the child, it would be improper for such officals to attend IEP meetings.

DRAFT

§ 121a.344 Participants in meetings. (Cont'd)

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(3) One or both of the child's parents, subject to § 121a.345.

(4) The child, where appropriate.

9. When may a handicapped child attend an IEP meeting?

Generally, a handicapped child should attend his/her IEP meeting whenever the parent decides that it is appropriate. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) be directly beneficial to the child. The agency must inform the parents about this provision before each IEP meeting--as part of the "notice of meeting" requirement in Section 121a.345(b).

NOTE: Although not required by the Act or regulations, it is recommended that, through the combined efforts of the parents and agency, older handicapped children (particularly those at the secondary school level) be encouraged to participate in their IEP meetings.

10. Are the parents precluded from attending IEP meetings when the student reaches the age of majority?

No. The parents retain the right to participate in IEP meetings after the student reaches the age of majority. (NOTE: The Act is silent concerning the rights of a handicapped student at the age of majority. However, if a student wants to attend his/her IEP meeting, it is expected that the student would be allowed to do so. The only exception would be where a student had been declared legally incompetent. Even in those cases, the student could attend if the parents decide it is appropriate.)

§ 121a.344 Participants in meetings. (Cont'd)

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(5) Other individuals at the discretion of the parent or agency.

11. Do related services personnel have a role at IEP meetings?

Yes, if a handicapped child has an identified need for related services. For example, when the child's evaluation indicates that he/she needs a specific related service in order to benefit from special education (e.g., physical therapy, occupational therapy, or counseling), the agency should insure that a qualified provider of that service either (a) attends the IEP meeting, or (b) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child. (NOTE: This could be a part of the evaluation report.)

12. Are agencies required to use a "case manager" in the development of a handicapped child's IEP?

No. However, some local schools have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or "case manager" of the IEP process for an individual child or for all handicapped children served by the agency. Examples of the kinds of activities which case managers might carry out are: (1) coordinating the multidisciplinary evaluation process, (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting, (3) communicating with the parents, and (4) participating in, or conducting, the IEP meeting itself.

DRAFT

§ 121a.344 Participants in meetings—Continued

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

13. For a child with a suspected speech impairment, who represents the evaluation team at the IEP meeting?

In general, a speech-language pathologist would be the most appropriate person. For many children whose primary handicap is a speech impairment, there may be no other evaluation personnel involved. The comment following Section 121a.532 (Evaluation procedures) states:

> Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 121a.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a) (1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

1. What is the role of the parents at an IEP meeting?

Under the law, the parents of a handicapped child are expected to be equal participants, along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's special education and related services needs, and (2) join with the other participants in deciding what services the agency will provide to the child. (NOTE: In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who knows the law and is familiar with the child's needs, or a specialist who conducted an independent evaluation of the child.)

2. What is the role of a surrogate parent at the IEP meeting?

A surrogate parent is a person appointed to represent the interests of a handicapped child in the educational decision making process when that child has no parent to represent him/her. The surrogate has all of the rights and responsibilities of parents under P.L. 92-142. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's educational records, and (3) receive notice, grant consent, and invoke due process to resolve differences.

DRAFT

3. Must the public agency let the parents know who will be at [illegible] IEP meeting?

   Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and who will be in attendance." (§121a.345(b)) In providing such notice, the agency should (a) give the name and position of each person who will be attending, (b) discuss with the parents the appropriateness of the child attending (See question No. 9 under §121a.344.), and (c) inform the parents of their right to bring other participants to the meeting (See §121a.344(a)(5). (NOTE: It is appropriate for the agency to ask whether parents intend to bring a participant to the meeting.)

4. Are parents required to sign IEPs?

   Signatures are not required by either the Act or regulations. However, having such signatures is considered by parents and by advocates and agency personnel at all levels (Local, State and National) to be a useful procedure. (NOTE: a National Survey indicates that, in practice, most IEPs do have parent's signatures.) The following are some of the purposes for which signed IEPs might be used:

   a. The use of signatures is one way to document who has been in attendance at the meeting. (NOTE: This is useful for monitoring and compliance purposes.) If signatures are not used, the agency must find some other way to provide such documentation.

   b. If the parents sign the IEP, this is a way to indicate that they approve the child's "program." However, if their signatures are used for this purpose, the agency must inform the parents that such approval does not take away the right to request another IEP meeting at any time they feel that a change is needed in the child's IEP. (NOTE: One way of insuring that parents are informed about this right is to include such a statement in the IEP that the parents sign.)

   c. If the agency representative signs the IEP, the parents have a signed record of the services that the agency has agreed to provide. (NOTE: Even if the school personnel do not sign, the agency still must provide, or assure the provision of, the services called for in the IEP.)

5. If the parents sign the IEP, does this indicate consent for initial placement?

   The parents' signature approving the IEP could satisfy the consent requirement in the regulations if the IEP includes a statement which meets the definition of consent in Section 121a.500:

   > As used in this part, "consent" means that (a) The parent has been fully informed of all information relevant to the activity for which consent is sought. . . (b) The parent understands and agrees in writing to the carrying out of the activity. . . and

the consent describes that activity and lists all records (if any) which will be released and to whom; and (c) The parent understands that the granting of consent is voluntary. . . and may be revoked at any time.

NOTE: Because "informed consent" is closely linked to the written prior notice requirement in Section 121a.505, an agency could distribute the notice and explain its contents at the time the IEP is signed and consent is obtained for initial placement.

§ 121a.346 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

1. What should be included in the statement of the child's present levels of educational performance?

   The statement of present levels of educational performance will be different for each handicapped child. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points to be taken into account in writing this part of the IEP.

   a. The statement should accurately describe the effect of the child's handicap on his/her performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.) and (2) non-academic areas ("daily life activities," mobility, etc.) (NOTE: Labels such as "mentally retarded" or "deaf" could not be used as a substitute for the description of "present levels of educational performance.")

   b. The statement should be presented in terms of objective measurable observations to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that were judged pertinent to the child's diagnosis might be included, where appropriate. However, the scores should be self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or any other aids.) Whatever test results are used should reflect the impact of the handicap on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, these problems and needs should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

> §121a.346 Content of IEP—Continued
>
> (b) A statement of annual goals, including short term instructional objectives;

2. Why are goals and objectives required in the IEP?

The statutory requirement for including annual goals and short term objectives and for having at least an annual review of a handicapped child's IEP, provides a mechanism for determining (1) whether the anticipated outcomes are being met (i.e., is the child progressing in his/her "program") and (2) whether the placement and services are appropriate to the child's special learning needs.

In effect, the IEP requirement is designed to insure on-going accountability and to provide protections for handicapped children and their parents. However, the goals and objectives in the IEP are not intended to address the specifics that are traditionally found in daily, weekly, or monthly instructional plans.

3. What are "annual goals" as used in the IEP Requirement of P.L. 94-142?

The annual goals in the IEP are statements which describe what a handicapped child can reasonably be expected to accomplish within one calendar year in his/her special education program. As indicated earlier, there must be a direct relationship between (a) the annual goals and (b) the present levels of educational performance—which are based on the current evaluation of the child.

4. What does the term "short term instructional objectives" mean as it is used in P.L. 94-142.

IEP objectives are measurable, intermediate steps between a handicapped child's present levels of educational performance and the annual goals that are established for the child. The objectives (a) are developed based on a logical breakdown of the major components of the annual goals, and (b) can serve as "milestones" for indicating progress toward meeting the goals.

The IEP objectives (as well as the goals) are concerned mainly with meeting the special education and related service needs of a handicapped child, and may not necessarily cover other areas of the child's education. Stated another way, the objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's handicap which interfere with his/her learning and educational performance in school.

Thus, for a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. However, the child's IEP would not usually include objectives related to other parts of his/her educational program. On the other hand, the goals and objectives for a severely retarded child would be more comprehensive and cover more of the child's school program than if he/she only has a mild handicap.

In some respects, IEP objectives are similar to other educational objectives, especially those used in classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent to which the child is progressing toward those accomplishments.

In other respects, however, objectives in IEPs are different from those used in instructional plans. The main difference is in the amount of detail. IEP objectives provide general "benchmarks" for determining progress toward meeting the annual goals. These objectives are usually projected to be accomplished on at least a quarterly or semester basis or for an entire reporting period during the school year. On the other hand, the objectives in instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. The instructional plans themselves usually include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards, etc.) that will be used in accomplishing the objectives.

5. **Is there a relationship between the goals and objectives in the IEP and those that are in "instructional plans" of special education personnel?**

Yes. There should be direct relationship between the IEP goals and objectives for a given handicapped child and those that are in the special education "instructional plans" for the child. From a Federal compliance standpoint, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by "IEP implementers" in working with a child, and (2) serves as the basis for developing a detailed instructional plan for the child.

6. **If a handicapped child is enrolled in both regular and special education classes, should the IEP include the goals and objectives of the regular teacher(s)?**

In general the answer is no. To meet the Federal requirements, the IEP goals and objectives need only target on offsetting the child's handicap. For example, if a learning disabled child is functioning several grades below his/her indicated ability in reading and has a special problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child to increase his/her ability to use "word attack" skills effectively (or to find some other approach to increase his/her independence in reading).

The special education teacher might develop a detailed instructional plan based on the child's IEP. However, it would not be necessary for the IEP itself to include the specific "lesson plan" objectives from either the special education teacher or the child's regular teacher(s).

Since the child's reading problem will likely have an effect on his/her performance in regular education, the child's regular teacher(s) should either be informed about and/or receive a copy of the child's IEP. (NOTE: At the discretion of the agency or the parents, the regular teacher also might attend the IEP meeting. See earlier questions and answers on participants at meetings.) Moreover, the agency should insure that the regular teacher(s) receives on-going assistance throughout the year (e.g., from the special teacher or through inservice training), as necessary, in order to help in minimizing the effect of the child's impairment on his/her participation in the regular program.

7. **When must IEP objectives be written--before placement or after placement?.**

IEP objectives must be written before placement. Once a handicapped child is placed in a special education program, the teacher might develop lesson plans or more detailed objectives based on the IEP; however, such plans and objectives are not required and would not be a part of the IEP itself.

8. Can short term instructional objectives be changed without holding another IEP meeting?

The legislative history of the Act makes it clear that the parents of a handicapped child are to be involved throughout the entire process of developing, reviewing, and revising the child's IEP. In some cases — if the parents are involved in the decision — it might be possible to make a change in the short term instructional objectives without holding another IEP meeting. This procedure can only be used under the following conditions:

a. No change can be made in any other part of the child's IEP (e.g., annual goals and the kind and amount of services).

b. Prior written notice must be given in accordance with Section 121a.504. The notice must include a statement indicating that the agency will hold an IEP meeting to discuss the proposed change, if the parents request it. (Through the prior notice provision, parents have the opportunity to accept or reject the proposed change before it is carried out. If they reject it, they would contact the agency and request another meeting.)

NOTE (1) Since the IEP is not an instructional plan with detailed objectives (See questions 4–6, above), the need to make changes in the IEP objectives should not be a common, routine occurence. If significant changes in the objectives are necessary (e.g., replacing all of the objectives under a particular goal), this would usually require another IEP meeting, and might mean that the child would need to be reevaluated.

NOTE (2) In addition to meeting the written notice requirement, it is recommended that the teacher either call or meet with the parents to discuss the proposed change. If the parents and teacher do meet together, the written notice could be given to the parents at the meeting.

§ 121a.346 Content of IEP—Continued

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

9. Does the IEP list all special education and related services needed or only those available in the public agency?

Each public agency must provide a free appropriate public education to all handicapped children under its jurisdiction. Therefore, the

DRAFT

IEP for an individual handicapped child must include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not available in the local agency, and must be provided by the agency through contract or other arrangements.

10. Is the IEP a commitment to provide services—i.e., must a public agency provide the services listed?

Yes. Each handicapped child's IEP must include all services necessary to meet his/her identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act. One of the purposes of the IEP is to set forth in writing a commitment of resources necessary to enable a handicapped child to receive needed special education and related services.

11. Must the public agency itself provide IEP services directly to a handicapped child?

The public agency responsible for the education of a handicapped child could provide IEP services to the child (1) directly, through the agency's own staff resources, (2) by contracting with another public or private agency, or (3) through other arrangements. In providing the services, the agency may use whatever State, local Federal, and private sources of support are available for those purposes. However, the services must be at no cost to the parents; and responsibility for insuring that the IEP services are provided remains with the child's public agency.

12. Does the IEP include only special education and related services or the total education of the child?

In general, the IEP is limited to matters concerning the provision of special education and related services. (NOTE: The regulations define (a) "special education" as specially designed instruction to meet the unique needs of a handicapped child, and (b) "related services" as those which are necessary to assist the child to benefit from special education.)

For some handicapped children, the IEP will only address a very limited part of their education (e.g., for a speech impaired child, the IEP would generally be limited to the child's speech impairment). For other children (e.g. , those who are profoundly retarded,) the IEP may cover their total education. An IEP for a physically impaired child with no mental impairement might consist only of specially designed physical education; however, if the child also has a mental impairment, the IEP might cover most of the child's education.

NOTE: If modifications to the regular education program are required to compensate for the child's handicap, these modifications would be included in the child's IEP (e.g., for hearing impaired child, special seating arrangements, or providing assignments in writing, where necessary).

13. Must physical education (PE) be included in every handicapped child IEP?

In general, the answer is yes. However, the kind and amount of information to be included in the IEP depends upon the physical-motor needs of the individual child and the type of PE program that is to be provided. The following is a description of some of the different kinds of PE program arrangements:

a. Regular PE with Non-Handicapped Students. Many learning disabled and speech impaired children participate in the regular PE program with non-handicapped students and without any special provisions. In addition, some children with other handicapping conditions and without any physical-motor problems (e.g., some educable mentally retarded (EMR) children) also participate in the regular PE program.

If a handicapped child is enrolled in the regular PE program without any special adaptations, only minimal information about the PE program is required in the IEP. Section 121a.346(c) requires a statement of "the extent to which the child will be able to participate in regular educational programs." Thus, for an EMR child who is in regular PE, the IEP would only have to indicate that the child is participating in the program (i.e., "regular PE").

Moreover, if a speech impaired child (for example) is (a) enrolled full-time in the regular education program (except for receiving speech-language pathology services), and (b) is treated equally in all respects with non-handicapped students (including participating in the regular PE program), it would not be necessary under the law to refer to PE in the child's IEP. What would be required is a statement indicating that the child is enrolled full-time in the regular education program.

b. Regular PE with Adaptations. Some individual children in various disability areas (including those with physical impairments) are able to participate in the regular PE program with non-handicapped students if special adaptations are made for them. For these children, the IEP would (1) include a brief statement of the physical-motor needs which require "adapted PE" (i.e., under "present levels of educational performance"), and (2) describe the special adaptations that are necessary (e.g., when bowling is a part of the curriculum, the use of a bowling rail for the blind, or a bowling ramp for children in wheel chairs, or a spring-handle bowling ball for students with cerebral palsy).

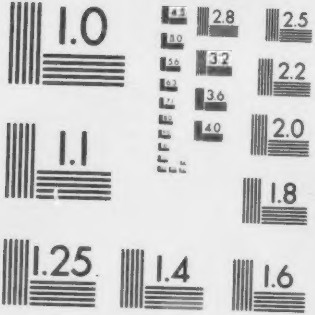
c. Specially Designed PE. Sometimes, an individual handicapped child will require specially designed PE that is different from that for non-handicapped children. It might also differ from the kind of PE provided to other children with the same handicapping condition. A child might participate in a special body conditioning or weight-training program, or, depending upon his/her specific needs and abilities, participate in some type of individual skill sport.

For these children, the PE program would be included under all parts of the IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be provided). However, as indicated earlier, the PE goals and objectives, etc., would not have to be presented in any more detail than any other areas included in the IEP.

d. PE in Special Settings. Under certain circumstances, some of the handicapped students within a given disability receive their education in a special setting (e.g., a residential school or a seperate wing of a regular school building). The PE program for these students is usually based on a State approved curriculum guide; and most of the students participate, as a group, in the same basic PE program.

When a handicapped child in a special setting participates in a basic PE program with the other students and no individual adaptations are made for the child, only minimal information is required in the IEP. For example, the IEP (1) would indicate that the child is participating in the basic PE prgram, and (2) could make specific reference to the applicable parts of the PE curriculum guide which apply to the individual child.

For children who have physical-motor problems or need specific help in the development of gross motor skills, the IEP would include a statement of (1) the child's special physical needs, and (2) the specific PE program, and any other special education services which will be provided to meet those needs. However, since the IEP is not an instructional plan, the PE program would not have to be described in any more detail than any other areas


1.0
4.5
5.0
5.6
6.3
7.1
8.0
2.8
3.2
3.6
4.0
2.5
2.2
2.0
1.1
1.8
1.25
1.4
1.6

MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS
STANDARD REFERENCE MATERIAL 1010a
(ANSI and ISO TEST CHART No. 2)

included in the IEP. To the extent that these students participate, as a group, in a basic PE program under an approved curriculum guide, it is permissible for a child's IEP to cross-reference the applicable parts of the guide which apply to the child.

NOTE: For handicapped children who are educated in special settings, it is assumed that the least restrictive environment provision has been implemented—i.e., that determinations are made about whether an individual child in a residential school (for example) can participate in some part of the regular school program of the local educational agency; and, when indicated, that the child enrolls in that PE program.

14. Must vocational education services be listed in a child's IEP?

Yes. Both P.L. 94-142 and P.L. 94-482, the Vocational Education Ammendments of 1976, require that vocational education be listed in child's a IEP. In addition, the Vocational Education Data System mandated in P.L. 94-482 requires that local and State agencies providing vocational education to handicapped students use the IEP as a basis for reporting services.

If a handicapped child is in a vocational education program and needs no special modifications to the program to compensate for his/her handicap, then his/her participation in the program need only be noted in the section indicating the extent of the child's participation in vocational education. However, if participation in vocational education is included as a part of a total special education program, or if modifications to the normal vocational education program are required to compensate for the child's handicap, then the vocational education program would have to be addressed in the IEP in the same way as any other area of special education. All efforts should be made to ensure that the providers of the vocational education services participate in the development of the IEP.

15. Must the IEP specify the extent or amount of services or simply list the services to be provided?

The extent or amount of services must be stated in the IEP, so that the resource commitment can be clear to parents and other IEP team members. Some general standard of time must be indicated, which (1) is appropriate to the specific service to be provided, and (2) is clear to all IEP participants. For example, in the case of speech-language pathology services, the IEP would indicate the number of sessions per week to be provided and the approximate length per sesssion.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgement of the service provider) without holding another IEP meeting. (NOTE: The parents should be notified whenever this occurs.)

DRAFT

§121a.346 Content of IEP—Continued

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6), 1414(a)(5); Senate Report No. 94-168, p. 11 (1975).)

16. Can the anticipated duration of services be projected for more than one calendar year?

In general, the anticipated duration of services would be projected for a period of up to one calendar year. (There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term objectives); and each part of the IEP would be addressed whenever there is a review of the child's "program.") However, for purposes of communicating that a particular service might be needed for an extended period of time, the anticipated duration of such services could be projected beyond one calendar year, provided that the "duration" is considered whenever a child's IEP is reviewed.

17. Must the "evaluation procedures and schedules" be included as a separate item in the IEP?

The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term objectives. (NOTE: In many instances, these components are incorporated directly into the objectives.)

OTHER "CONTENT" QUESTIONS

18. Is it permissible for an agency to have the IEP completed when the meeting begins?

It would not be appropriate for an agency to present a completed IEP to parents for their signature. The Act defines the IEP as a written statement developed in any meeting with the agency representative, the teacher, the parent, and the child whenever appropriate.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and in some cases, with a recommendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents from the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their handicapped children.

19. Is there a prescribed format or length for IEPs?

No. The format and length of IEPs are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated earlier, the IEP is not intended to be a detailed instructional plan; and, therefore, the Federal IEP requirements can usually be met in a one to three page form. (NOTE: In a national survey on IEPs conducted through a BEH contract, it was found that 47% of the IEPs reviewed were 3 pages or less in length.)

20. Is it permissible to integrate the IEP requirement under P.L.94-142 with the individualized service plan requirements under one of the other Federal programs in which such plans are mandated (e.g., Medicaid and Title XX), or must they be maintained as separate, distinct records?

In instances when a handicapped child must have both an IEP and an individualized service plan under one of the other Federal programs, it may be possible to develop a single, consolidated document, provided that (1) it contains all required information from both programs, (2) all necessary parties participate in its development, and (3) it includes an assurance that the requirements of each participating agency are met.

Examples of individualized service plans which might be integrated with the IEP are: (a) the Individualized Care Plan (Medicaid), (b) the Individualized Program Plan (Title XX), (c) the Individualized Service Plan (Title XVI, SSA, SSI) and (d) the Individualized written Rehabilitation Plan (Rehabilitation Act of 1973).

Is the IEP subject to the confidentiality requirements under P.L. 92-142?

Yes. The IEP is subject to the confidentiality requirements of both the Act (Section 617(c)) and regulations (§§ 121a.560-121a.576). In addition, under the Family Educational Rights and Privacy Act (FERPA), the IEP is considered to be an "educational record," and is subject to the same protections as other records relating to the student that are maintained by the public agency. (NOTE: The Act and regulations for P.L. 94-142 both cross reference the FERPA.)

NOTE: Under Section 99.31 of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents "if the disclosure is—(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests."

DRAFT

§ 121a.347 Private school placement.

(a) *Developing individualized education programs.* (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with § 121a.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Reviewing and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a)(4)(B).)

If placement decisions are made at the time the IEP is developed, how can a private school representative be in attendance at the meeting?

Generally, a child who requires placement in either a public or private residential school has already been receiving special education; and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed--by either the parents or school personnel. If both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At the meeting in which the IEP is finalized, the public agency must insure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls.

§ 121a.348 Handicapped children in parochial or other private schools.

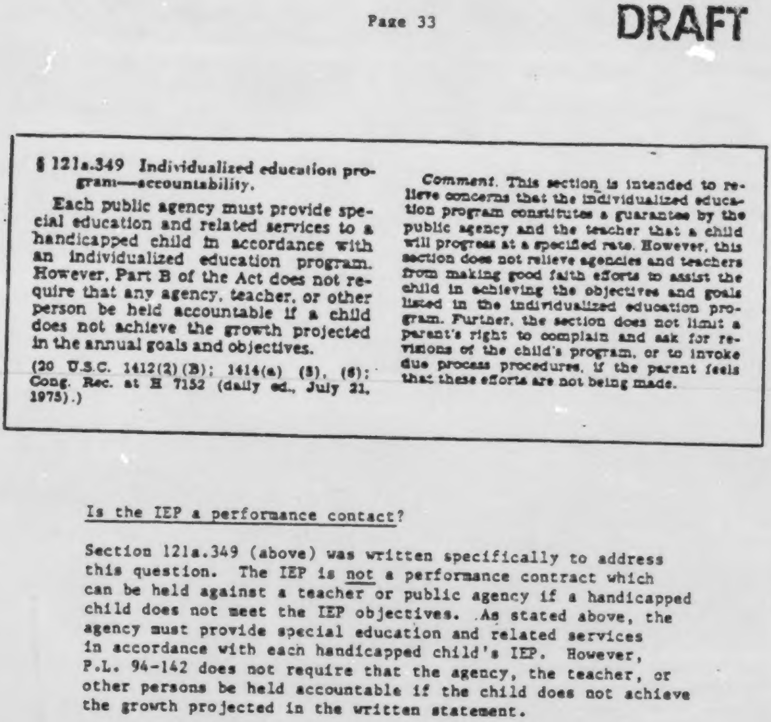
If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with § 121a.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a)(4)(A).)

NOTE: A separate policy clarification paper is being developed concerning the education of handicapped children placed in parochial or other private schools by their parents. Any questions concerning IEPs for this group of children will be addressed in the private school paper.



Page 33

DRAFT

§ 121a.349 Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a) (5), (6); Cong. Rec. at H 7152 (daily ed., July 21, 1975).)

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

Is the IEP a performance contact?

Section 121a.349 (above) was written specifically to address this question. The IEP is not a performance contract which can be held against a teacher or public agency if a handicapped child does not meet the IEP objectives. As stated above, the agency must provide special education and related services in accordance with each handicapped child's IEP. However, P.L. 94-142 does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

Dr. MARTIN. This question of the length of these plans is something that can be controllable, in large measure, by local and State people taking another look at what they are doing that exceeds the Federal requirements.

Also, many teachers are bearing a burden which I think is a little different than what the Congress intended. When I worked with the staff in developing this act, I think there was a feeling that many of the IEP's, particularly the first time around, would be generated by the committees themselves rather than by the teachers uniformly. I think, as we now are past the first year of the act, there is some revision of that. But a lot of teachers have had a tremendous burden, special education teachers particularly, in generating multiple numbers of these plans. This has been so for resource teachers, speech therapists, and others.

I think probably part of our guidance is going to be to try to have a number of these IEP's less dependent on a given teacher generating plans and more on the team that has appraised the child.

In summary, I have said that I think special education today is in the state described by Dickens in the "Tale of Two Cities" in his opening lines when he said, "It is the best of times; it is the worst of times." I think it is the best of times, really. We have aspirations in this program for every child who is handicapped in the United

States, bar none. We have aspirations for an appropriate, free public education and every child having an individual program, bar none. We have aspirations for parents to participate in every one of those.

The frustrations are greater that we face now, those you have seen reflected in your hearings, because, if we had more modest aspirations, we would obviously not create the discrepancy between where the system is at present and where we want it to go.

Public Law 94-142 changed the goals of the United States. Before Public Law 94-142, there was an unstated goal which essentially was: Let's do a pretty good job for most of the children within the available resources; but, if we run out, well, that's the way it is.

Today we have a higher goal, a much more difficult one to achieve, a goal which represents a high level of compassion and humanity on the part of the Congress and the American public. We are making very good progress. There are still painful deficiencies, and it will take local, State and Federal commitment to achieve our purposes.

I, frankly, think this is a reachable goal in the next few years. It is one of the few social programs that I have had the opportunity to witness since I have been an adult that I think is really a reachable goal. It is not a question of we may never get there. As a matter of fact, I think we will get there. I think we are very close to getting there.

There is a definable population here. It has certain limits.The assumptions of the American education system are changing as a result of this law and State laws and court orders.

I, frankly, think that you and your colleagues are going to be in a position in a few years from now of sitting back and for public policy purposes, assuming that you have reached the objectives. I do not think there is going to be an argument about whether handicapped children go to school any more. I do not think people are going to be debating the least restrictive environment. I do not think people are going to be debating individual education programs.

I think all those things are going to be as much a matter of course as the third grade is now, or vocational education or other parts of the system. I think there will always be problems in implementation. The system will not work perfectly in special education any more than it does anywhere else.

I think the policy issue that led you to this law is a successfully reachable issue and one that we stand very near to now.

I, frankly, think that no aspect of American education will be more beneficial to the public than special education because of the parent involvement and because of the individual education plan. Many people think that is true right now, frankly. They think there are more citizens taking part in special education than in any other part of education and that it is a model that ought to be followed.

Before I finish, I would just like to add one note, Mr. Chairman. I know the next witnesses you have up are from the General Accounting Office and have testimony to follow. We have seen a draft of their report. We have had the chance to comment on the draft report. We have not seen how they have taken our comments into account, so I am not sure exactly what their statement will be. But there are at least two points that I want to mention strongly to you that we do not concur with so that you would have the benefit of that thinking.

One, we do not concur that the 12-percent estimate is not useful. As I mentioned to you earlier, over 20 States are now in that range. We have every reason to believe that other States can get there. At the same time, we have not imposed a quota on anyone. We have emphasized finding children because the law requires aggressive efforts to find children. Secretary Califano felt it was a major priority of the Department and instructed me to have an initiative to do a better job of seeking out these children. All of the reports from the Inspector General's office and elsewhere led us to believe that there were children unserved in the schools and that we had to be aggressive in seeking them out in this program as we have to in health programs and other programs designed to benefit the population.

Second, the General Accounting Office has raised a question about speech-impaired children. We think they failed to understand fully the problems faced by speech-impaired children, and also to have the resources available to determine whether the educational problems of these children are severe.

Starting in 1958, the Congress first enacted training teachers programs and in 1961 began considering teachers for the deaf and for speech-impaired children. For about 20 years there has been a commitment in the Federal education law to consider speech-impaired children as handicapped children.

If the committee, after reviewing the General Accounting Office's testimony, wants to bring in professional witnesses, I do not believe they will find from the special education community or from the speech and hearing community or elsewhere any doubt that children with speech and language problems need and require special education. The Congress has known that for 20 years. I do not see any reason to change that position now. I do not think the General Accounting Office has presented any data that, frankly, makes me think it is an issue deserving much attention.

[The prepared statement of Dr. Martin follows:]

TESTIMONY OF EDWIN W. MARTIN, JR.
ASSISTANT SECRETARY, OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION BEFORE THE U.S. SENATE LABOR AND HUMAN RESOURCES SUBCOMMITTEE ON THE HANDICAPPED

Mr. Chairman, I want to compliment you and the members of the subcommittee on the very comprehensive hearings you have held reviewing progress on implementation of the Education for All Handicapped Children Act. We have been following the hearings closely and have found the testimony very helpful. In my statement today I will refer to some of the information presented by the witnesses.

Public Law 94-142 created a commitment to the participation of disabled children in our public education system as a matter of national public policy. In its emphasis on a free appropriate public education in accord with an individual education program, Congress created an enlightened public policy which is unique. Even nations with very excellent health and educational programs for disabled children have not built such programs on a legislative base which fundamentally emphasizes the intrinsic rights of the individual, a premise which is so consistent with American constitutional ideals.

As the Congress studied the need for legislation such as P.L. 94-142 in the early 1970's and federal and state courts considered cases brought by parents of handicapped children, it triggered a massive change in the assumptions of the public education system about its responsibilities for handicapped children. Many states began to modify their laws and increase funding. Although a careful national census was not available before P.L. 94-142 became effective, there is little argument with the estimate that more than one million children have been added to the special education rolls during this period. 327,000 additional children have received services in the last three years who were not previously served. Making this growth more impressive is that it has come at a time when school enrollment was declining rapidly. Instead of a decline of special education students of a magnitude of 300,000 or more, there has been a gain of that magnitude, making a relative gain

Page - 2 -

of approximately 2/3 of a million children served. More than 4 million children are now benefiting from this national program.

I think most people agree that this growth would not have occurred without the impetus of the federal law, even though most states had state laws mandating special education services. These laws, while accomplishing considerable good, did not result in any state completely serving all its disabled children. One index of the impact of the federal law is the frequency with which officials and occasionally editors say the federal government wanted us to do this and so should pay for it. Since 49 states have mandatory laws, clearly there is primary state responsibility. In some cases, the visible public awareness and commitment associated with P.L. 94-142 and with Section 504 of the Rehabilitation Act which prohibits discrimination against the disabled, has resulted in some people losing sight of the primacy of local and state responsibility. Under President Carter the support for Public Law 94-142 has grown from $250 million to a request of $922 million in the budget now before Congress. While the administration's commitment has been strong and will continue, the premise must remain that local and state governments must be the primary guarantors of the right to education.

In Table I you can see a state by state report on the number of children served, the sums distributed to each state for the current school year, and the percentage of enrollment that is composed of disabled children. Nationally, handicapped children comprise 9.5 percent of the enrollment. When Congress was considering the bill we testified that most special education experts estimated that 10 to 12 percent of school-aged children would require special education. For many years the figure of 10 percent has been in the literature of the United States and other countries, but the growing recognition

TABLE I

Allocation and Child Count by State

STATE	CHILDREN SERVED	% OF ENROLLMENT	FY 1981 FUNDS		INCENTIVE GRANT
			PART B	89-313	
ALABAMA	72,378	9.43	$16,142,271	$ 611,811	$ 179,156
ALASKA	10,242	11.56	1,815,450	1,641,517	45,005
ARIZONA	48,303	9.49	10,712,944	601,134	174,407
ARKANSAS	45,027	9.94	9,109,702	2,385,281	240,349
CALIFORNIA	355,533	8.78	79,687,992	2,789,014	2,099,253
COLORADO	47,228	8.58	9,903,380	2,328,302	207,324
CONNECTICUT	62,551	10.90	13,505,455	2,046,456	326,797
DELAWARE	14,434	13.87	2,703,088	1,751,965	91,844
DISTRICT OF COLUMBIA	5,217	4.91	668,848	2,296,513	39,285
FLORIDA	136,963	9.10	29,403,063	3,753,610	629,743
GEORGIA	101,847	9.46	22,520,969	1,277,289	546,641
HAWAII	11,382	6.75	2,383,302	601,862	15,865
IDAHO	18,066	6.91	3,969,749	280,535	66,914
ILLINOIS	250,463	12.82	49,727,517	20,574,681	1,961,324
INDIANA	98,818	9.12	20,896,619	3,385,135	430,190
IOWA	58,969	10.[illegible]5	11,165,923	617,838	523,653
KANSAS	38,733	9.16	3,348,480	1,107,453	246,717
KENTUCKY	67,087	9.91	14,527,089	1,287,535	249,307
LOUISIANA	85,640	10.59	18,032,390	3,023,443	479,943
MAINE	24,307	10.67	5,178,763	744,029	133,503
MARYLAND	93,763	12.06	20,435,211	2,621,529	525,811
MASSACHUSETTS	141,869	13.53	29,052,864	10,143,298	628,232
MICHIGAN	155,385	8.35	32,662,429	7,849,666	1,353,597
MINNESOTA	82,346	10.58	18,484,039	621,907	782,889
MISSISSIPPI	42,430	8.80	9,331,896	640,596	118,826
MISSOURI	98,134	11.24	21,520,304	1,726,622	718,674
MONTANA	12,781	7.91	2,787,971	327,131	115,588
NEBRASKA	30,386	10.58	6,771,565	327,094	443,033
NEVADA	11,207	7.59	2,457,972	370,846	81,699
NEW HAMPSHIRE	12,627	7.38	2,032,877	1,808,735	18,779
NEW JERSEY	149,578	11.61	32,226,894	5,550,273	715,544
NEW MEXICO	20,479	7.43	4,533,290	285,332	61,949
NEW YORK	218,587	7.41	44,906,897	15,166,645	1,487,640
NORTH CAROLINA	114,894	9.99	24,886,341	2,557,993	634,600
NORTH DAKOTA	9,776	8.26	2,092,340	296,710	65,187
OHIO	201,352	9.94	42,757,590	6,999,889	712,306
OKLAHOMA	60,997	10.45	13,416,260	926,137	517,501
OREGON	44,145	9.45	8,956,731	3,315,498	177,645
PENNSYLVANIA	190,244	9.66	39,702,260	10,519,761	1,047,953
PUERTO RICO	21,035	2.87	4,461,798	443,145	223,297
RHODE ISLAND	16,071	10.43	3,477,474	511,574	51,049
SOUTH CAROLINA	71,466	11.44	15,832,244	877,276	474,763
SOUTH DAKOTA	9,850	7.42	2,104,369	281,998	126,057
TENNESSEE	93,004	10.74	20,742,741	785,499	843,543
TEXAS	267,612	9.31	57,396,480	7,668,723	2,353,632
UTAH	36,127	10.85	7,908,859	624,496	181,962
VERMONT	12,424	12.45	2,301,143	1,275,847	90,333
VIRGINIA	91,051	8.83	19,902,990	1,679,946	699,463
WASHINGTON	54,049	7.07	11,612,612	1,923,368	222,002
WEST VIRGINIA	33,964	8.74	7,459,706	549,674	131,561
WISCONSIN	65,611	7.65	14,370,398	2,098,964	612,907
WYOMING	9,873	10.34	2,008,365	670,434	64,971
AMERICAN SAMOA	167	2.09	$ 541,859	$ 0	$ 2,806
GUAM	1,790	5.49	1,505,928	202,931	6,799
NORTHERN MARIANAS	58	-	198,669	0	324
TRUST TERRITORIES	1,742	-	1,538,833	245,000	19,858
VIRGIN ISLANDS	1,318	5.20	958,391	0	0
BUR. OF INDIAN AFFAIRS	4,839	-	8,658,416	0	0
U.S. AND TERRITORIES	4,036,219	9.54	874,500,000	145,000,000	25,000,000

of the problems known as specific learning disabilities had convinced the National Advisory Committee on the Handicapped to attempt a definition of these children and to provide an estimate that an additional 1-3% of school-aged children would be affected by specific learning disabilities. This led to the revision of the national estimate to 12%.

The steady, if relatively small, growth year by year in special education enrollment, despite the high costs schools face in providing such services for handicapped children, plus the reports from many sources, parents and educators, that there still are children attending school whose disabilities have not been appropriately identified leads us to believe these historic estimates of the prevalence of educationally disabling conditions are still reasonable, although there may well be variation from community to community and perhaps state to state.

It seems important to me to take a few minutes to reflect on the accomplishments which have occurred under the Act, because the complexities of the process of assuring each child an appropriate program, and each parent an appropriate role in the development of that program, each an historic and dramatic changes from past practice, have necessarily led to considerable focus on what is not working perfectly.

More than four million children are receiving special education services. Each child has an IEP. More children are receiving additional services, physical and occupational therapy, for example, than ever before. More children are participating in physical education, in the arts, and in all facets of overall school life.

Some of the comments in your hearings provide more insight than statistics do. A state director of special education said they "made more progress in upgrading and developing quality education opportunities during the last four years than over the past forty years." A college dean reported progress in reducing overrepresentation of minority children in special education. Teachers and parents reported the responses of children in moving terms. The Chairman's state of West Virginia provides a good example, with officials there reporting growth in the number of professionals working with handicapped children from 400 to 2,200 and the number of children served increasing from 6,600 to 30,000 over the last decade. Washington State reports 51,166 children served in 1979-80 versus 29,262 served in 1974-75. Vermont has more than doubled its services to handicapped children. Similar progress is the rule rather than the exception.

Another area of important progress has been in services to pre-school children. Although services in this area were not mandated by the Act, these services have been supported by P.L. 94-142 funds in many states, and also from the special incentive grant program. Chairman Williams' state, New Jersey, reports it is now serving about 50% of the 12,000 children under five years of age estimated to require such services--progress that would not have been possible without 94-142 assistance. In Washington state more than 5,000 preschool children have participated in a developmental screening process supported by the law. I think it is critical that such cost-effective and educationally beneficial programs expand.

In each major facet of the law, such as individual programming, least restrictive environment, new services, there are reports from outside observers indicating progress, and more importantly that is the message from parents and children. It would be good to report that everything involved in this historic, really revolutionary change in American educational practice was working perfectly from the first day. No one really expects that logically, but emotionally it still is frustrating when things don't work without flaw, particularly when emotions and hopes are as high as they are in this program which has a major impact on children, parents and educators as well as on the public at large. With 4 million children, even if 95% were satisfactorily served, an exceptionally high rate of success, there could still be as many as 200,000 complaints from dissatisfied parents, teachers, etc. So some level of concern will be inevitable.

An analysis of the testimony reveals several types of issues that were frequently mentioned by witnesses and which must be addressed by program administrators. These are for the most part the same issues we identified in our annual reports to the Congress and which have been found in other analyses of the initial years under the law. I think it might be helpful to look at these areas where problems exist.

Table Number II presents an analysis of what various witnesses before the subcommittee identified as problem areas. The chart indicates that parents, teachers and support personnel tended to concentrate on problems associated with the development of the IEP. It also indicates that local and state level administrators tend to emphasize related services problems, which includes difficulties in inter-agency agreements, and the administrators also emphasized funding problems. Personnel training was frequently mentioned by both groups. It can also be seen from the analysis that there is diversity in what is seen as a problem among the various groups.

TABLE II

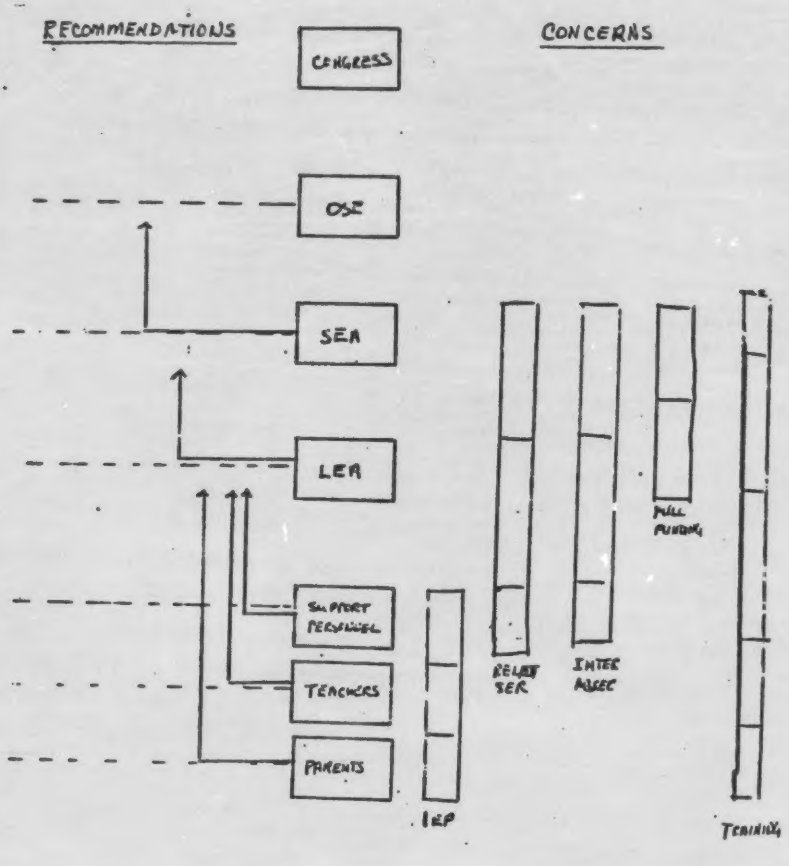
% OF INDIVIDUALS WHO INDICATED AREA WAS A PROBLEM

	FAPE	LRE	IEP	TRAINING	PARENT RIGHTS	EARLY INTERV.	RELATED SERVICES	FULL FUND
Parents (23)	22	26	26	39	22	30	13	04
Teachers (6)	17	50	50	67	17	33	17	33
Support Personnel (5)	0	0	60	40	40	60	80	60
Administrators LEA (6)	17	0	33	0	0	33	50	50
Administrators SEA (9)	0	0	22	44	0	0	78	67
Deans (5)	0	0	0	100	20	0	0	0
Advocates (2)	0	50	0	50	0	50	50	50
Handicapped Adult (1)	0	100	0	0	0	0	0	0

Figure I has been developed to show the recommendations of the various witnesses, again by role, which have been offered during the testimony. This figure also indicates the administrative level to which the recommendation is directed. For example, the parents ordinarily report difficulties with local school programs and their recommendations are for actions at that level. Administrators often direct their concerns to state or federal levels, either to the Executive branch or to Congress. One message is that people at each level feel the people at the "next level up" must resolve problems. In some instances people at the local level look directly to the federal government feeling it will be more responsive than local or state officials.

This really becomes a fundamental issue in implementing the law and in assuring compliance. It is my feeling that the system for resolving difficulties must work effectively at the local level. Fundamental responsibility for compliance must lie with local and state officials. With even a small percentage of problems, the number of such problems is in the tens of thousands. There are more than 12,000 school districts, perhaps 100,000 school buildings and millions of teachers and children involved. Clearly no massive federal compliance force can deal problem by problem in each locale across the nation. Our efforts must be directed to fashioning a more effective system where most problems are quickly and satisfactorily resolved at the local level, where states assume a more vigorous compliance role, and where the federal efforts involve better coordination between the Office of Special Education and the Office of Civil Rights, and clearer standards for what effective compliance includes. Basically, the Act provides resources for local and state education agencies, and leaves the fundamental control of education at the local level.

FIGURE I


RECOMMENDATIONS
CONCERNS
CONGRESS
OSE
SEA
LEA
SUPPORT PERSONNEL
TEACHERS
PARENTS
IEP
RELAT SER
INTER AGEC
FULL FUNDING
TRAINING

It is a local committee that decides on the IEP and so determines what "appropriate" education is for each child. If the parents disagree, there is a local hearing with an impartial hearing officer and then a state education agency level appeal, and possible recourse to the courts. The Act does not contemplate Office of Special Education officials deciding on the specifics of a child's IEP in this appeal process. Only if there seems to be a systematic problem in the development of IEP's for example, the consistent denial of certain services even when needed, would the Office of Special Education play a role, and here it should be through state officials--requiring them to assure the children's rights as established under the law. Many people do not make this same assumption--instead assuming that the system depends on direct federal involvement case by case, complaint by complaint. Case by case investigation of complaints of violations of Section 504 of the Rehabilitation Act is a function of the Office of Civil Rights, but even that office's large, regionalized staff must depend on cooperation of local officials, and basic support of the law.

As a result of experiences with the first years of the law we see the need to improve federal compliance activities. Despite the overwhelming success of the Act in achieving its purpose, there are serious problem areas. The question before us is what federal actions will be quickly effective, and still create the local and state-based cooperative attitudes which are necessary for the law to work.

Since the Education Department came into existence we have made a major effort to improve compliance through increased coordination between the Office of Civil Rights and the Office of Special Education, and through a variety of other activities. Along with Cynthia Brown, Assistant Secretary for Civil Rights, I am serving as co-chair of a department-wide task force established by Secretary Hufstedler. The final report of this task force for the Secretary is due September 30 and will be made available to the Subcommittee.

Work is progressing in four major areas -- data collection, enforcement, policy development, and technical assistance. I would like to summarize for the subcommittee some of the major tasks now underway.

In the area of data collection, we have already surveyed the data sources available throughout the Department which might be of assistance in enforcing Public Law 94-142. We have also developed a mechanism for working with the Office for Civil Rights more effectively to access information included in complaints in connection with our compliance efforts. We are continuing to work on developing a strategy for maintaining a more effective system for data storage, are examining the need to collect additional data, and are considering the possible publication of a comprehensive compilation of available data for use by the public.

In the area of enforcement, the Office of Special Education and the Office for Civil Rights together have identified priority issues and have determined those areas for which data are available. Working with the Office of General Counsel, we have developed mechanisms for improved coordination with the Department of Justice. The Office of Special Education and the Office for Civil Rights have also developed a strategy for more effective sharing of information relating to compliance activities and have recently worked together very closely and successfully in resolving compliance problems in two states. We are continuing to work on development of an effective FY 1981 plan for compliance activities which would involve coordination of the Office of Special Education and the Office for Civil Rights activities and perhaps joint site visits in a limited number of states. In addition, we are currently evaluating staffing needs and alternatives, over the short and long run, and are working on improved training strategies useful to both the Office of Special Education and the Office for Civil Rights. We also plan to develop decision rules for use of available enforcement options and to develop a strategy for evaluating the effectiveness of our enforcement activities and other efforts in this area.

In the area of policy development, we have worked very hard in the past several months, along with the Office for Civil Rights and other agencies within the Department, to perfect policy statements in a number of key areas including use of insurance proceeds, psychotherapy, catheterization, and components of IEPs. I expect definitive guidance to the States on a number of these issues to be forthcoming in the very near future. We are also taking steps to alert the public that the Department is developing policy in several other areas, including placement in the least restrictive environment and the circumstances under which services need to be provided during an extended school year. We believe innovative steps to invoke public comment at an early stage will be a helpful part of an improved policy development process being developed by the Office of Special Education in coordination with the Office for Civil Rights.

Lastly, we are taking steps to assure that the Department provides technical assistance to teachers, parents, and others in the most effective possible way. We have identified those areas in which technical assistance is now provided, and are considering the need for targeting technical assistance to particular users with regard to specific issues, and the means for improving coordination between the Office for Civil Rights and the Office of Special Education efforts in this area.

I am confident that these task force activities will allow us to provide more effective guidance to state and local officials. We have also been working with state officials to increase compliance. In virtually every one of our monitoring visits to states we have documented the need for increased state-level activity in: advising local school districts as to their responsibilities under the law, providing additional training to teachers and others; and, visiting on a more regular basis to assure effective problem resolution. In the last three years states have agreed to remedy hundreds of problem areas identified during federal site visits.

Finally two areas frequently mentioned in your hearing record deserve more specific mention, training needs and IEP's. Using discretionary funds available to the Office of Special Education, inservice training and other training of regular educators has become the major activity of the Department's training program as opposed to its earlier concentration on the training of specialists. Of the 123,000 teachers receiving training 82,200 will be in this target group. Further through a series of grants to deans of colleges of education we have made good progress in efforts to revise the programs of those colleges so that future teachers will not follow programs with no training whatsoever in special education. Almost all of today's teachers and principals followed courses of study which involved no work with handicapped children. Perhaps that is as good an example as any of the assumptions of the education system before P.L. 94-142 and an index of how far we have come.

It is important that the states take a more active role in providing inservice training and encourage the local districts to do the same. Although approximately $30 million in federal discretionary funds are targeted on this area, the states have at their disposal more than $200 million as a result of the 25% set aside in the formula which the states control. While this money is generally distributed to the locals or used to fund local service programs which the state approves, it presents a major opportunity for states to use their discretion to provide additional training. Although we do not have the authority to order the states to use the funds in this way, we are putting major emphasis on efforts to urge them to follow this approach.

I feel the Individual Education planning process is a critical element of the law, and I feel it must be preserved and made more effective as a matter of urgency. For many years educators, teachers, administrators, and professors have preached about the necessity for an individual approach to educating each child. In this law the Congress has provided the opportunity for educators to practice what they have preached, and there are very few people who do not think it was a very good idea, although one group raised the possibility of ending that requirement with the subcommittee. I believe strongly that the education system needs to encourage parental involvement, and to make stronger ties with parents to improve programs for children and to provide additional support of public education.

Various reports including testimony to this committee suggest that most parents feel very positively toward the IEP process. Where there is a problem it is because of too little IEP involvement, not with the concept. Further, although there definitely is a burden on teachers and some other school employees, I believe that the system of developing IEP's can be improved to reduce the burden.

First, some school districts are relying too heavily on teachers to develop the plan when the intention of the law, as reflected in the legislative history and hearing record, seems to have been that appraisal teams conduct the planning process and develop the report as a product of their work.

In our technical assistance work with the states we are encouraging the use of the teams, rather than solely relying the teacher to develop plans. Secondly, as the process becomes more familiar there have been a reduced number of concerns raised in most areas of the country.

In addition, we have recently received a study of a national sample of IEPs which provides information which can be helpful in reducing the burden without reducing parent involvement. Figure II shows that the number of pages found in various IEPs ranged from 1 to 47 pages. As you can see 60% of the IEPs were 4 pages in length or less, and the largest single group was two pages in length. The study determined that length is not basically a function of federal requirements, but instead is very directly a product of local decisions and in some instances state decisions. However, in some instances local people think they are doing what the federal government requires.

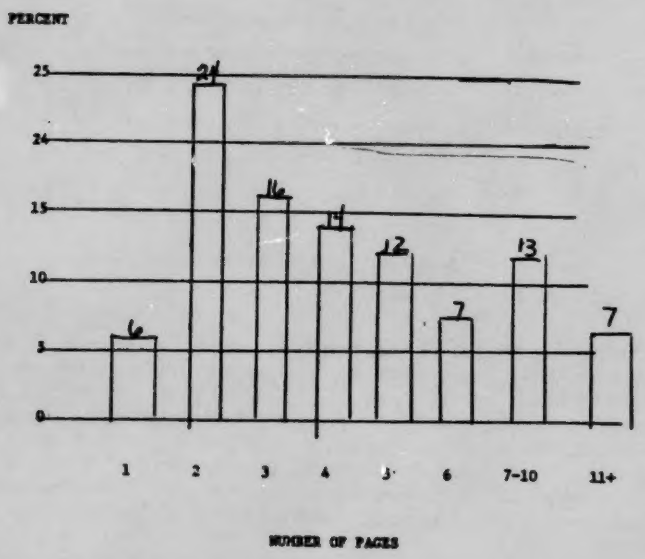
As a result of this study we will initiate a coordinated effort with state officials to provide better information to local officials about the essential requirements of the law. At the same time we want this training effort to emphasize the need for full participation and informed involvement of parents.

In summary, I have said from time to time that special education today is in the state described by Charles Dickens in his Tale of Two Cities in his opening lines, "It is the best of times--it is the worst of times."

Really I believe it is the best of times, but because of our aspirations in this program, that every child in the nation, bar none, have an appropriate, free public education, and that every child, again, have an

FIGURE 11

Distribution of the Number of Pages in IEPs



individual plan developed with parental involvement, our frustrations are greater than if we had set more modest goals. Before 94-142 the unstated goal of the United States was, for all practical purposes, let us do a pretty good job for some children within available resources. Today we have a higher goal, a difficult one to achieve, a goal which represents a high level of compassion and humanity on the part of the Congress and the American public. We are making good progress; there are still painful deficiencies; and, it will take local, state and federal commitment to achieve our purposes. I personally think this is a reachable goal in the next few years. I think we will reach the position soon where it is a matter of course that handicapped children are served in the least restrictive environment, and the public policy issues will be history. Because of the individual focus on children and the involvement of parents it will not be unreasonable to say that no aspect of American education is working more beneficially than special education. A number of people believe that is true now.

Senator RANDOLPH. Thank you very much, Dr. Martin. It is not a pleasantry when I say that you are very articulate and your testimony is helpful.

I wish to say for the record that we do have other subcommittee and committee responsibilities. Sometimes we spread ourselves a little thin. The Veterans' Affairs Committee, of which Senator Stafford and I are both members, was in session this morning, and he has been there. We often have to share responsibilities in our subcommittee.

I have said it often, and I say it again for the record. The cooperative spirit we have within our subcommittee is good. We have our differences, yes, but do not have animosities. This is very important.

I look upon the GAO as doing a very worthwhile job.

Dr. MARTIN. Yes.

Senator RANDOLPH. I cannot always agree with them.

Dr. MARTIN. No.

Senator RANDOLPH. I think they serve a very, very commendable purpose in the structure of government.

Dr. MARTIN. I do, too. I applaud them. It just happens that sometimes, particularly recently, they go beyond the traditional role of accounting and into the area of public policy. It leaves them open, I think, to be disagreed with in a different way. When the numbers do not add up, there is not much you can say about it. But, when we get into deciding matters of educational benefits to children, that is an area where I think a debate is worthwhile. I just wanted to get my 2 cents in while I was here.

Senator RANDOLPH. I am only saying, Senator Stafford, that later we will hear the Director of the Human Resources Division of the

General Accounting Office of the United States. We must always recognize that they often have a key role to perform in connection with a program or a new law. The very newness of it, regardless of the commitment, causes difficulty.

Do you have any statement, Senator Stafford, at this time or questions of Dr. Martin and his associates, who have been introduced?

Senator **Stafford**. Thank you, Mr. Chairman. I appreciate your noting that until I got here I was at the Veterans' Affairs Committee meeting. The matter there under consideration was the impact of agent orange and similar dioxins on our veterans who have served in Vietnam.

I do have one or two questions.

Dr. Martin, do you encounter from time to time any problem in some of our States along this sort of line; that is, a feeling on the part of some people in the State that too many children are being put in the handicapped education programs for insufficient reasons? Do you ever encounter something like that?

Dr. **Martin**. We have not had that problem with the exception—and a very important exception it is—that in some instances children from minority groups may be identified as having learning disabilities, mental retardation, and so forth. There is a concern that there may be an overinclusion of such children, and there is some data to suggest that. It is one of the key issues that we are addressing with the Office of Civil Rights. In our round of monitoring visits this year, we will focus particular attention on that dimension. It is a difficult issue because the tests are not so good that you can really sort out children on a definite basis and you have to take into account the possibility of various factors influencing the judgments that should not be there.

Basically, with that exception—and I am not sure if you were referring to that. If you are talking about the general question, are our parents complaining to us that their children are being identified as handicapped, no; on the contrary, the demand is for more services for more children almost universally.

There are some people in the community that have raised some issues for fear that resources would be diverted away from their children. So, they might say: I think there is too much being done for the handicapped; or I think too many children are being viewed as handicapped, and so forth. But we have not had any complaints from parents saying: "Hey, we didn't want these services, and we don't think our kids are handicapped, and schools are foisting this off on us."

It is in part because most schools would not do that given this exception.

We have found in very few instances—and we monitor carefully—some States counting children who should not be counted. For example, in the State of Tennessee, as we did our routine visits, we discovered there were two classes of children who were being identified as learning disabled. One group were called learning problems, and one group were called learning disabled. The children who were called learning problems did not have the full, comprehensive battery of tests required. So, we discounted and disallowed about 20,000 children in that State who had previously been counted because they did not meet the criteria set out in the regulations.

But, no, I do not think there is a complaint of too much. If anything, the complaint is that we have not gone far enough.

Senator Stafford. Would it be a fair statement to say that, even in the absence of Public Law 94-142, which the chairman and I so strongly have supported through the years, that under the existing court decision parents, if they wished, could go to court and compel an equal educational opportunity be provided to them by the local element of government in which they might reside?

Dr. Martin. Yes. Not only that but 49 of the States have laws now that essentially offer the same—and this is one of the funny public policy issues that, frankly, frustrates me a good deal. As I mention in my prepared statement, there is no question but what the Education of the Handicapped Act and section 504 have caught the public's attention and have caught the attention of educators and are playing a tremendous role. In fact, that began when the bill was first considered in this committee in 1972. From that time on, I think people saw the handwriting on the wall.

Furthermore, there were a variety of Federal court and State court decisions. So, much of the growth and change began before the effective date of the act in 1978. For example, millions of children were added to the system during those years in anticipation of this act.

I find it frustrating when a public official, a mayor of a big city recently, or a newspaper, says: if the Federal Government wants us to do this, they ought to pay for it. At the same time they ignore the fact that they have in their own State a law requiring exactly the same thing. They have had a half dozen court orders ordering it to be done.

I think the law is providing a positive impetus. It is also providing almost a billion dollars of assistance this year. Somehow we have got to help people to see that the intention of Congress here is to help them do a job which they were already committed to do morally and, in most cases, legally.

Senator Stafford. I think you summarize that very well. But I think many people overlook that particular aspect.

Dr. Martin. I find it incredibly frustrating. In a recent New York Times editorial, the editor did not for some reason seem to think it important, that there is such a law in New York and that the State commissioner of education has ordered the city of New York on repeated occasions to comply. Nevertheless, the Times editorial board and the mayor keep saying the Federal Government is making them do this.

Senator Stafford. Let me ask you one last question, Dr. Martin. That is this. I think we have made tremendous strides in gaining access to education for handicapped children. Where do you go from here? I think that is my question. Particularly what plans and strategies do you have to upgrade the quality of the education for handicapped children?

Dr. Martin. Let me just tick off the headings without elaborating on them.

One is increasing emphasis on training personnel. I can tell you that within the administration's priorities, the Secretary and the

President continue to be concerned about trying to provide growth and resources in this area. The most recent example of that was when the difficult decisions were made about programs cuts, no programs affecting disabled people in the education department were identified for the Congress' consideration.

Two, we are also going to improve our coordination with the Office of Civil Rights. I mentioned that we already have a task force at work so that we can be more effective in investigating complaints and in doing joint compliance activities.

Three, we are going to issue a series of policy statements, the first of which have been issued already, which should provide more guidance to the States and to the local districts.

The tradeoffs are that the more we do to instruct, to guide, to regulate, to specify what an LRE should be, an IEP should be, the more, in a sense, we are open to the accusations of intrusion into State and local affairs. On the other hand, if we do not do those things, we are left open to accusations that we are not serious about trying to implement the law.

What I am trying to do, frankly, and what I have been trying to do over the last few years is to strike a balance which continues to put the emphasis on local and State compliance, which continues to build their capacity, which continues to avoid an adversarial relationship with the States, and at the same time increases notch by notch our compliance monitoring efforts so that we move forward.

We are criticized on both sides. We are criticized by the administrators, for pushing too hard, and by at least some advocacy groups for not pushing hard enough. And both are right; we are not doing enough, and we are doing too much. But we are going to continue to try and move in that direction.

Senator **Stafford**. Thank you very much.

Senator **Randolph**. Thank you, Senator Stafford.

I have noted that Gregory Ahart came in just at the moment that his staff or others said he would arrive. I looked at the clock, exactly 10 minutes of 11.

I do want to say that in his absence—and I hope that he will perhaps read that, if nothing else, in my comment—that I was complimentary of what the GAO in general does.

I think that the study was a good idea. Actually, you initiated in a sense, not improperly, your desire to come and testify in reference to these programs.

That brings me, Senator Stafford, to your first question here: "Are children who are not eligible being counted for purposes of Public Law 94-142?" I think the GAO has said that there were about 385,000 handicapped children in fiscal year 1978 who apparently had no IEP's and were counted for Public Law 94-142 by the local school. These children generated about $60 million in fiscal year 1979 in grant funds.

I do not know whether you would like to comment on that situation.

Dr. **Martin**. Yes, I would. GAO was talking about the first year of implementation of the law. As I understand their draft report, they say that as they went out that year, 1978, they found in some instances that the individual education plans were not in place.

The children were in special education. The children were receiving the benefits that those school districts intended for them to receive. But schools had not caught up with the required process of getting all the IEP's in place. A number of States, I am sure, have told you that during the first year suddenly trying to provide IEP's for all 3.6 million kids, was quite a task. Some of them were slow, and, we bore some responsibility for that by adding the requirements about what an IEP should be.

The fact is that was a year when some States reported on children who were receiving special education and they had not caught up with providing the IEP's. We found that in our own records that year, and made such statements. It was not true in the second year. In fact, studies since that time indicate that over 95 percent of the children have an IEP in their file.

We considered the issue whether or not to allow States to count those children. We have articulated clearly since that time a policy that any child cannot be counted who did not have an IEP. But our attorneys did advise us that it would be possible to count children who were receiving special education at that time, provided an IEP would be provided. So, in that first year we made that judgment. We did not know, by the way, because school districts did not tell us that these kids don't have IEP's. But, as we discovered this situation, when we found the child was actually a bona fide recipient of services, with the State receiving $70 from the Federal Government against thousands that were being spent by the local district, we felt it was not the intent of the law to punish these States for this behavior during that first year.

That is quite different than the situation in Tennessee where we found counting of children who were not eligible under the law. In this situation we made them, essentially, uncount 20,000 children.

But that is not a problem now. I do not think any children at all, by the GAO's account or by ours, were receiving funds who were not getting special education. The only question was, could we pay them for that enrollment even though the IEP was not fully in place in that first year.

Senator **Randolph**. Dr. Martin, I know that Senator Stafford and perhaps other subcommittee members will have questions to ask of you by letter. You may initiate something if you want to add other information for the record.

Dr. **Martin**. We may want to reply to testimony we have not seen yet. We have had the good fortune to see all the other testimony. As you see, we tried to summarize it and tabulate it and speak to it. But it may well be that we would like to be able to supply additional comment for the record.

Senator **Randolph**. If your associates have any comment individually, we would like to have it if you feel there is some point you would like to stress or bring to our attention.

If not, thank you very much. We will be seeing you again in another capacity. Is that rehabilitation?

Dr. **Martin**. Yes. We will be back working with you.

Happily, Congress takes the praise for this new program, putting it together. I happen to think bringing together a program that I am honored to have the opportunity to head up in its first days that is concerned about disabled people from birth through aging is a marvelous step forward for the U. S. Government. I hope to do everything I can to strengthen and improve these programs during the time I have the opportunity to serve in this role.

I think the Congress in its wisdom in creating this new assistant secretariat has given us really a golden opportunity to integrate these programs well, to coordinate them, to have them strengthen each other. It has also given us the opportunity to be a focus for the concern of disabled people in the Government that has not previously existed. Thank you.

[Dr. Martin's response to Senator Randolph's questions follows:]

OFFICE OF THE SECRETARY OF EDUCATION
ASSISTANT SECRETARY FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES
400 MARYLAND AVENUE, S.W. WASHINGTON, D.C. 20202

September 26, 1980

The Honorable Jennings Randolph
Chairman, Subcommitte on the Handicapped
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20515

Dear Mr. Chairman:

Again, I would like to thank you and express my deep appreciation to you and the members of the Subcommittee for the comprehensive hearings you held to review the implementation of Public Law 94-142. They have been most valuable to us.

I am also appreciative of the opportunity to testify before the Subcommittee on September 10. In addition, you asked for responses to thirty-one questions. The questions and answers are enclosed.

Please let me know if I may be of further assistance.

Sincerely,

Edwin W. Martin
Assistant Secretary for Special Education
and Rehabilitative Services

1. YOU WILL RECALL THAT DURING THE HEARINGS ON YOUR NOMINATION AS ASSISTANT SECRETARY FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES ON JUNE 12TH, YOU WERE ASKED TO RESPOND TO SEVERAL QUESTIONS REGARDING THE STAFFING OF THE OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES. IT HAS COME TO OUR ATTENTION THAT DURING THE PAST 3 MONTHS YOU HAVE MADE SEVERAL NEW APPOINTMENTS, ONLY ONE OF WHOM HAS BEEN A HANDICAPPED PERSON. AS YOU CONTINUE THE PROCESS OF SEEKING STAFF FOR THE REMAINING POSITIONS, WHAT ARE YOU DOING TO RECRUIT QUALIFIED HANDICAPPED INDIVIDUALS FOR THOSE POSITIONS? DO YOU HAVE ANY HANDICAPPED INDIVIDUALS ON YOUR PERSONAL STAFF OR ON YOUR PROGRAM STAFF?

Thus far I have employed only three persons from outside the agency, and each is an exceptionally talented person. Each of these appointments has responded to our equal opportunity goals for disabled people, minorities and women.

In establishing the Office of the Assistant Secretary for Special Education and Rehabilitative Services, thus far we have relied primarily on persons already in government. This has been necessary since the Department is in the process of reducing by 500 the number of positions now available. In choosing persons from existing programs we have selected, and are in the process of selecting several individuals with disabilities,for the Assistant Secretary's immediate office.

As I mentioned during my confirmation hearings, the programs for the disabled, particularly the Bureau of Education for the Handicapped, have led the way among federal agencies on employment of disabled individuals. To our knowledge no major unit of the government -- Congressional, Executive, or Judicial -- has approached the percentage of employees who are disabled (more than 13% in OSE) now employed by these programs. We continue to seek and find qualified disabled people.

2. HOW MANY PROFESSIONAL STAFF ARE EMPLOYED IN THE AID TO THE STATES DIVISION OF OSE? HOW MANY ARE ASSIGNED SOLELY TO COMPLIANCE AND MONITORING?

There are currently 58 professional staff assigned to the Division of Assistance to States (DAS). These staff are assigned to three administrative units: Field Service (30), Compliance (18), and Policy (10). The Field Service unit is responsible for reviewing the Annual Program Plans, conducting Program Administrative Review (PAR) visits, providing technical assistance to the States, and working with the Compliance Section to insure State resolution of compliance problems. The Compliance unit is responsible for compliance, enforcement, and coordination of activity between OSE and OCR as well as participation in PAR visits, the provision of technical assistance, and the collection of data. The Policy unit provides interpretation and clarification of the rules and regulations, provides technical assistance, and processes awards to the states.

There are currently seven staff solely assigned to compliance activities. None of the current Field Service staff is solely assigned to monitoring.

The OSE has recently approved a plan to reorganize the Division of Assistance to States. Under the provisions of the proposed reorganization, 20 staff will be solely assigned to compliance, with 17 staff assigned, in part, to monitoring.

3. A NUMBER OF WITNESSES HAVE RECOMMENDED THAT PUBLIC LAW 94-142 BE AMENDED TO INCLUDE HANDICAPPED CHILDREN AGE 0-3. COULD WE HAVE YOUR THOUGHTS ON THIS RECOMMENDATION?

I answered this question during the hearing. If I may quote from my testimony, my answer is as follows:

"I know Congress felt is was not appropriate when the law was passed to mandate such services, and so the incentive grant program was enacted. However, all of the evidence we have, Senator, is that if we could get our interventions to these young children in the first days of life when their disabilities first become apparent, we can sharply reduce the magnitude of disability for many children. We can increase their rate of development, their rate of language and speech and of motor development. Then they will be more likely to be able to go to schools that are less intensively separating.

I think it is very, very critical that, as the Congress moves ahead in its thinking in this area, we continue to examine ways to increase the efforts for pre-school children."

4. RECENTLY, THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS RELEASED A POLICY STATEMENT OUTLINING SOME ADMINISTRATIVE IMPLEMENTATION PROBLEMS WITH PUBLIC LAW 94-142. THE PROBLEMS IDENTIFIED CLEARLY ARE SIGNIFICANT TO STATES. ARE THEY SIGNIFICANT TO THE DEPARTMENT? WHAT STEPS ARE BEING TAKEN TO ADDRESS THESE ISSUES?

Yes, we believe the Council of Chief State School Officers' report is significant to the Department and we have initiated discussions with the Council about the four points the Council raised. We are currently exploring a revised plan approval process with the Council. The OSE/OCR relationship with State agencies is one of the topics under discussion by the Secretary's Task Force on Equal Educational Opportunity for Handicapped Children. The question of consistency of standards and criteria to meet the P.L. 94-142 requirements is being discussed by representatives of OSE and the Council. Finally, the issue of supervision of interagency responsibilities is currently being clarified through discussions with the Council. We feel confident that greater understanding and more efficient procedures will result from these discussions.

5. THE GENERAL ACCOUNTING OFFICE REPORT NOTED THAT THE GOAL STATED IN PUBLIC LAW 94-142 THAT ALL HANDICAPPED CHILDREN BE RECEIVING A FREE APPROPRIATE PUBLIC EDUCATION BY SEPTEMBER 1, 1980 WILL PROBABLY NOT BE ACHIEVED UNTIL AT LEAST THE MID-1980's. DO YOU FEEL THAT THIS IS AN ACCURATE ASSESSMENT OF THE PROGRESS TOWARD ACHIEVING THE GOAL?

Dramatic progress has been made since the enactment of P.L. 94-142 in the provision of services to handicapped children. Child find programs have resulted in the location of many handicapped children who were previously unserved. Funding has been sufficient to enable State and local school programs to enroll these children as they are found. Furthermore, States have been increasing both the number of children served and the types of services each year despite declining school populations and fiscal constraints.

However, the goal of providing a full free and appropriate education to all handicapped children is an on-going process; it is difficult to determine when the goal will be reached. We know that problems exist. For instance, a major barrier to providing all the related services required has been lack of sufficient numbers of qualified staff to effectively evaluate the needs of children and to provide related services. We have taken steps to stimulate statewide personnel needs assessments so that staff shortages can be identified and appropriate college training programs developed or expanded. In addition, the quality of services provided depends largely on the resources that are available year to year from all sources to fund special education programs. We believe that as of September 1, 1980 every State had made the commitment required to serve all children, and with that full achievement of the goal is possible.

6. THE GENERAL ACCOUNTING OFFICE STATED THAT THEY FOUND MANY POTENTIAL VIOLATIONS OF P.L. 94-142 YET OSE DID NOT WITHHOLD FUNDS OR CONDUCT COMPREHENSIVE EVALUATIONS TO DETERMINE COMPLIANCE. GAO ALSO NOTED THAT OSE TOOK NO CORRECTIVE ACTION BECAUSE IT WAS NOT AWARE OF THE VIOLATIONS.

We concurred with the GAO Report regarding weaknesses in OSE's monitoring and evaluation activities. The Federal compliance activities during the first few years of the Act were drastically different from those presently employed. Current OSE practice calls for a comprehensive visit to each State every other year. We are currently field testing a process of monitoring states on the basis of identified compliance problems. In this system States are ranked using various compliance criteria to prioritize issue areas to be emphasized during the visit. An example of the compliance issues being used to rank states would include the existence of waiting lists, the extent of minority misclassification, and the number of handicapped children denied services because of the lack of community resources. In addition, a system has been developed to follow-up on the receipt of reports, requests for further information, and recommendations for corrective action. This will increase our responsiveness in the follow-up procedures relating to each monitoring visit.

The Office of Special Education, working with the Office of General Counsel, has developed mechanisms for improved coordination with the Department of Justice in the area of enforcement. The Office of Special Education and the Office for Civil Rights have also developed a strategy for more effective sharing of information relating to compliance activities and have recently worked together very closely and successfully in resolving compliance problems in two states.

7. GAO NOTED THAT OSE's POLICIES REGARDING NOTIFICATION TO STATES OF CHANGES NEEDED IN THEIR PLANS WERE INCONSISTENT AND SOMETIMES TOO INFORMAL. IN ADDITION, SOME COMMUNICATIONS WERE UNCLEAR. HAS OSE DEVELOPED PROCEDURES TO BE FOLLOWED IN OSE TO IMPROVE THIS SITUATION?

Yes. OSE has developed and implemented new procedures which formalize responses to all plans which are submitted by the States. These include: (a) letters acknowledging receipt of plans, (b) letters summarizing areas of inconsistency, and (c) detailed checklists which identify and reference each item which is not consistent or for which further clarification must be provided.

8. ACCORDING TO GAO, BEFORE 94-142 WAS ENACTED, OSE ESTIMATED THAT ABOUT 6.7 MILLION CHILDREN AGED 6 TO 19 WERE HANDICAPPED. AS OF DECEMBER OF 1978, HOWEVER, THE TOTAL NUMBERS OF HANDICAPPED CHILDREN REPORTED BY THE STATES IN THE AGE RANGE OF 6 TO 17 AND 3 TO 21 WERE ABOUT 3.6 MILLION AND 3.9 MILLION, RESPECTIVELY. WOULD YOU COMMENT ON THIS DISCREPANCY, PLEASE.

Based upon population statistics of the 6 to 19 age range as of the 1970 census and a prevalence estimate of 12 percent, there would be a projected 6.7 million handicapped children in the population aged 6 to 19. Since these estimates were developed there has been steady and substantial decline in the population of children in that age range. As of December of 1979 States reported serving over 4 million handicapped children in the age range of 3 through 21. This figure represents over 9.5 percent of the children who are enrolled in school. We continue to believe that the 12% prevalence estimate is reasonable. Twenty States either approach or exceed this figure. Over time we expect that the remaining States will continue to increase. A number of factors account for belief that the count of handicapped children will continue to increase. Services to children in the 3 through 5 and 18 through 21 age range are not fully developed. Twelve states mandate services starting at age 6 and another 22 states mandate service at the age of either 4 or 5.

There are reasons to believe that SEAs and LEAs may not be doing all they can to identify handicapped children. A recent Inspector General's report indicated that 75 percent of the school administrators and personnel interviewed felt that there were substantial numbers of children in school who were not identified. These data are consistent with the current draft of the GAO report which indicates that states lack the resources to provide free appropriate public education to all handicapped children.

In addition, we have determined through a study conducted in Region V that 15 to 25 percent more handicapped children actually receive services during a school year than are counted on December 1. The data reported by States on handicapped children receiving special education and related services includes only those receiving services on December 1 of each year.

9. GAO STATES THAT THE 94-142 REGULATIONS REQUIRE THAT A CHILD'S HANDICAPPING CONDITION MUST "ADVERSELY AFFECT" THE CHILD'S EDUCATIONAL PERFORMANCE IN ORDER FOR THAT CHILD TO BE ELIGIBLE AS A 94-142 CHILD. HAS OSE DEFINED WHAT IS MEANT BY "ADVERSELY AFFECT"?

The standard for determining whether a child fits into any of the handicapping conditions listed under P.L. 94-142 is the determination that the impairment "adversely affects a child's educational performance." A definition of the term "adversely affects" in relation to the definition of "speech impaired" appears in DAS Information Bulletin #66. The principle established in that bulletin is that a handicap necessarily "adversely affects educational performance" when the handicap is judged sufficiently severe as to require the provision of special education with any necessary related services to the child. The process for determining a child's disability and need for educational services is described in sections 121a.530-533 of the Part B regulations which discuss evaluation procedures.

In the evaluation process, a professional judgment is required. The bases for that judgment are the results of various formal and/or informal measures of the child's psychological, physical, behavioral, or perceptual functioning and not solely the results of academic achievement testing.

10. THE GAO ALSO NOTED THAT SCHOOLS HAVE IMPROPERLY COUNTED AT LEAST 385,000 HANDICAPPED CHILDREN IN FISCAL YEAR 1978 WHO HAD NO IEPs. THESE CHILDREN GENERATED ABOUT $60 MILLION IN FISCAL YEAR 1979 GRANT FUNDS. WOULD YOU COMMENT, PLEASE?

In accordance with P.L. 94-142, we do not permit States to count handicapped children for purposes of generating funds unless those children have individualized education plans. In those instances where we suspected that children without IEPs are counted, steps were taken to determine if these children were actually receiving special education and related services. In addition, procedures for counting children in schools have been verified as being valid by state agencies. We cannot attempt to undertake the elaborate administrative remedies required to re-do counts. Studies have verified that over 95% of the children counted during recent years do in fact have appropriate IEPs. We feel the spirit and intent of the Act has been followed and was better served by not stopping the flow of funds over this technical problem which was confined to the first year's good faith efforts to implement the IEP requirement.

11. THE GAO REPORT ALSO NOTES THAT A 1978 DRAFT PREPARED BY SRI INTERNATIONAL ESTIMATED THAT THE RATE OF HANDICAPS AMONG CHILDREN AGED 3 TO 21 TO BE ABOUT 7 PERCENT. WHAT IS THE POSITION OF OSE WITH REFERENCE TO THE ACCURACY OF THIS STUDY?

States provided special education and related services in the 1979-80 school year to about 9.5 percent of the children enrolled in school. In fact, 49 States now provide special education and related services at a rate which exceeds the 7 percent figure.

The SRI study was not a study of the accuracy of the 12% prevalence estimate but a study to determine the best estimate of the number of handicapped children.

The 7 percent figure was, in fact, equivalent to an estimate of more than 5 million handicapped children. This should not have been converted to a percentage of 3 through 21 population, however, because not all states serve or are required to serve this full age range. Elementary and secondary enrollment is a much more accurate base because it reflects the actual age range served by the states. Thus, the current figure of more than 4 million is 9.5 percent of enrollment, not 3-21 population.

13. PLEASE DESCRIBE THE TECHNICAL ASSISTANCE OSE IS CARRYING OUT TO ASSIST LEA's IN DEVELOPING IEP's.

We have recently developed a major policy clarification paper on the IEP process. The paper has been circulated in draft form and is being used extensively by State and local agencies and contractors to orient and train staff in IEP development. We expect formal issuance of this paper in the near future by presentation in the Federal Register.

In addition, many of OSE's discretionary dollars are also directed toward the provision of technical assistance to facilitate the full implementation of P.L. 94-142, including the provisions of IEPs. Two programs which have major IEP technical assistance components are:

1. The 7.5 million dollar Regional Resource Center Program supports 12 regional centers which has placed a heavy emphasis during the past and current school year on training of staff in the development of IEPs.

2. The Special Education Personnel Development program provides funds for training special and regular education teachers, administrators and parents in meeting the requirements of P.L. 94-142. IEP development has been heavily emphasized particularly in the inservice training programs. A substantial share of the $10,175,000 devoted to training of support personnel and parents have been to train and inform parents and advocates of their rights and roles in the IEP developmental process.

14. A WITNESS AT A PREVIOUS OVERSIGHT HEARING NOTED THAT OSE "IS MONITORING PAPER, NOT PEOPLE." WHAT ACTION HAS OSE TAKEN OR WILL IT TAKE TO ADDRESS THIS CRITICAL ISSUE?

During the first years of implementation, the monitoring activities of the Office of Special Education concentrated on the review of emerging State and local policies and procedures many of which could only be verified through examination of documented plans and procedures. The past two years however, OSE staff has visited and reviewed local programs to determine the extent to which the documented policies and procedures were indeed in place. Even with a limited staff, 45 States and other jurisdictions have had extensive on-site program administrative reviews to determine the extent to which State and local education agencies are actually implementing the Act.

In addition, we are training members of our staff to specialize in the compliance and review function. Some reassignment of incumbents is planned, and the resources to support the immediate hiring of additional senior level staff have been requested. Training of all staff involved in compliance review and complaint investigation will begin shortly. The staff of OSE will continue to monitor each State at least once every two years, and in addition select some States for more frequent monitoring on the basis of compliance data available within the Office of Special Education, the Office for Civil Rights and other Federal agencies. We are projecting that 31 States will be monitored during the 1980-81 school year. The Office of Special Education will improve and expand its efforts to collect and review compliance data.

The Office of Special Education will continue to revise its on-site monitoring procedures to focus more intently on actual practices by State and local officials requiring less emphasis on paper monitoring. These improvements include: (a) changing the scheduling of reviews to double the amount of time spent by the Office of Special Education staff members in investigating activities, (b) strengthening efforts to collect input from parents and other advocate groups before selecting sites to review, and (c) strengthening the accountability measures imposed on States following the review to insure that non-compliance identified during the review is actually remediated by the SEA.

15. ANOTHER CONCERN OF MANY WITNESSES HAS BEEN THE LACK OF PREPARATION OF REGULAR EDUCATION TEACHERS WHO NOW HAVE HANDICAPPED STUDENTS IN THEIR CLASSROOMS. WHAT ACTION IS OSE TAKING TO ADDRESS THIS PROBLEM?

We are targeting $19.125 million for special education training for regular education teachers. Of this amount, $7.25 million is targeted for Regular Education Preservice Dean's Grants that are awarded to institutions of higher education to improve preservice programs for regular education teachers. In addition, the Regular Education Inservice (REGI) projects have targeted approximately $11.8 million for training regular classroom teachers and administrators. Currently, more than 82,000 regular classroom teachers as well as some 23,000 administrators and 33,000 parents are being trained in 207 projects.

Data from the States' Annual Program Plans submitted under P.L. 94-142 for FY 79 indicated that 263,870 regular class teachers are being trained in the development of IEPs, 222,988 in concepts pertinent to the least restrictive environment, and 183,250 in instructional procedures. States also project that substantial numbers of parents, administrators, and special class teachers will be trained in these same three subject areas.

Some State education agencies are requiring that a percentage of the flow-through funds to local education agencies be earmarked for training of regular classroom teachers. Illinois, for example, requires a 10% set-aside for this training. Generally, the States are beginning to require that local school systems develop such programs.

16. IT HAS BEEN RECOMMENDED THAT TEACHERS SHOULD HAVE THE RIGHT TO INITIATE THE DUE PROCESS MECHANISM AS A CHILD ADVOCATE. WHAT IS YOUR REACTION TO THIS SUGGESTION?

The implementing regulations for P.L. 94-142 do not extend to teachers the right to initiate due process procedures as a child advocate. Section 121a 506(a) states that "a parent or a public educational agency may initiate a hearing...". It is only as a representative of the local education agency that a teacher may be involved in the initiation or proceedings of an administrative due process hearing.

As a person involved in the education of a handicapped child, a teacher could be presented with a conflict of interest. The teacher's responsibility to the LEA could interfere with the obligation to represent the best interest of the handicapped child, potentially in opposition to the LEA.

17. WHEN ALBERT SHANKER TESTIFIED BEFORE THE SUBCOMMITTEE ON THE HANDICAPPED, HE STATED "WE MAINTAIN, MOREOVER, THAT THE ONLY WAY PUBLIC 94-142 WILL EVER WORK IN ITS PRESENT FORM IS WITH A MASSIVE INFUSION OF ADDITIONAL FEDERAL FUNDS TOTALING SEVERAL BILLIONS OF DOLLARS." COULD WE HAVE YOUR COMMENTS ON THAT STATEMENT.

P.L. 94-142 was enacted by the Congress in recognition of the need to proclaim an overall national policy reflective of prevailing State laws and court orders regarding the right of handicapped children to a free and appropriate public education. The program proposed and implemented is one designed to assist States in meeting the costs of fulfilling their responsibilities to these children. Federal support for this programs has been unwavering.

Implementation of the full array of desirable and required social policy in our American system, especially in times of fiscal constraint, does and has set up competing priorities and makes for difficult choices. We continue to maintain that, while in general the costs of educating handicapped children are considerable when compared to those of educating non-handicapped children, they need not be massive. The costs to our society -- both philosophically and economically -- would be massive if we were to deny the rights of this population.

18. HOW WOULD YOU DEFINE THE FEDERAL ROLE IN EDUCATION WITH RESPECT TO THE IMPLEMENTATION OF PUBLIC LAW 94-142?

In the early 1970s, the basic goal of the Federal effort was to improve the education of the handicapped and to provide for equity and equality of education. The Federal government's commitment was to ensure that all handicapped children had available special education services which would enable them to develop to their fullest potential and thereby reduce their dependency on society. The Federal program was based on two concepts: that education for the handicapped is not a charity but a fundamental right to which each child and his family are entitled and that it is cost-beneficial to society to help each handicapped person become as independent and productive as possible.

The achievement of this goal was to be accomplished primarily through the Handicapped State Grant program. This program acted as a catalyst to effect a multiplication of services for handicapped children using State and local resources. Through an active program of technical assistance the Bureau of Education for the Handicapped entered into a partnership with the States to stimulate and support efforts to educate handicapped children.

With the passage of P.L. 94-142, the role of our office became that of assisting the States in meeting the mandates of the law through distributing funds, assisting in the development of State plans, clarifying policy issues, monitoring progress in implementation, and assisting the public to obtain needed services. In the coming years, in order to ensure full and effective implementation of the law, the Office of Special Education will place increasing emphasis on compliance activities, while continuing to support associated technical assistance activities and discretionary programs. As it expands its assertive enforcement role, the Office will require that a similar assertive role be taken by the States in ensuring the compliance of local education agencies.

The Office's compliance role will rely on a positive, nonadversarial approach designed to help States develop the resources needed to comply with the law. Punitive action may become necessary if a State consistently fails to meet the law's requirements, but in all enforcement activities, the primary objective of the Office is to assure that all handicapped children are adequately served and that their rights are protected.

The Office will provide technical assistance as one means of aiding the States in implementing P.L. 94-142. The purposes of the Office's technical assistance will be to (1) provide assistance in the correction of problems or instances of noncompliance identified through monitoring; (2) provide assistance in the improvement of the quality of educational services provided; (3) interpret the law, program regulations, Federal policies, and administrative directives, and (4) provide assistance in identifying and disseminating quality educational programs and management practices.

As a result of the Office's expanded compliance role, the discretionary programs will be more clearly directed toward assisting in the implementation of the various components of the law and will place particular emphasis on those areas of need made evident through the monitoring activities of the Office. Within each program's legislative and regulatory authority, program activities will be directed in a manner which will help insure that the States fulfull their responsibilities for providing full educational opportunity for all handicapped children.

19. IT IS OUR UNDERSTANDING THAT HANDICAPPED CHILDREN ARE BEING KEPT WAITING INDEFINITELY FOR SERVICES WHEN REFERRED FOR EVALUATION SINCE NO TIMELINES ARE ESTABLISHED WITH RESPECT TO THE MAXIMUM LENGTH OF TIME ALLOWABLE BETWEEN TIME OF REFERRAL FOR EVALUATION AND EVALUATION. WHAT ACTION HAS OSE TAKEN TO RESOLVE THIS PROBLEM?

Although there are no specific Federal guidelines regarding the maximum time allowed between referral and evaluation, most States and local agencies have adopted their own standards to insure that evaluations occur within a reasonable time after referral. Typically, time periods are thirty or sixty days. A number of States have set guidelines through legislation: West Virginia (60 days), Louisiana (50 days), New Jersey (60 days), California (35 days), Washington (30 school days), and Maryland (45 days). Where there are no set timelines, we have in instances encouraged States and provided technical assistance to local agencies to develop reasonable policies. In addition, during our monitoring visits we examine referral lists to determine whether children are required to wait unreasonable lengths of time.

20. AS YOU ARE AWARE, THERE HAVE BEEN CONCERNS EXPRESSED BY SOME STATES BECAUSE OF THE LENGTH OF TIME REQUIRED TO NEGOTIATE AN APPROVABLE STATE PLAN. WHAT PROCEDURE IS THE OSE TAKING TO IMPROVE THIS SITUATION?

We have proposed a series of steps to expedite the approval of State plans. The proposed procedure consists of five stages which should allow for the approval of an appropriate plan within 75 days from formal submission. The first stage consists of formal notification to the State by OSE that the plan has been received. Following this, informal negotiations take place and technical assistance is provided by OSE if necessary. Stage 3 consists of the internal plan approval/disapproval process which will result in either approval or a notice of intent to disapprove the plan. If a letter of intent to disapprove is issued, stage 4 is initiated which consists of clearly specifying steps to remediate the problems responsible for disapproval. If the Secretary disapproves the plan, stage 5 results in the appeal process which is outlined in the regulations. This process should be in place for FY 81 applications. Such a procedure, coupled with the recently instituted three year applications, should expedite the State plan approval process.

21. HAS PUBLIC LAW 94-142 MADE ANY CHANGES IN THE QUALITY OF EDUCATIONAL SERVICES PROVIDED TO HANDICAPPED CHILDREN, AND IF SO, WHAT ARE THE CHANGES?

The effects of P.L. 94-142 on the quality of special education are evident in virtually every school district in the nation. Changes which have occurred since the passage of the law are widespread, affecting not only the immediate classroom environment but also the service delivery system as a whole. Specific changes which have occurred as a result of P.L. 94-142 include increased communication between school districts and other human resource agencies for the provision of related services, more training of regular and classroom teachers in the needs of handicapped students, inservice training of special education staff and administrators concerning the rights of handicapped children, and inservice training of special education staff to increase technical competence. In addition, there has been a marked increase in special education services available in rural and isolated school districts. Related services and placement options have expanded, as has the involvement of parents in the placement decision.

We have recently contracted with the Rand Corporation to study the effects of the law on the quality of special education. More complete information on the effects of P.L. 94-142 will be available upon completion this study.

22. HAVE THERE BEEN ANY PROBLEMS WITH RESPECT TO THE COMPATIBILITY OF THE REQUIREMENTS UNDER PUBLIC LAW 94-142 AND THOSE UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973?

We are implementing procedures to facilitate coordination between the two Federal agencies which have responsibility for administering P.L. 94-142 and Section 504.

The new Department of Education has helped alleviate difficulties pertaining to enforcement problems that previously existed in the Department of Health, Education and Welfare. Because both the Office for Civil Rights and the Office of Special Education and Rehabilitative Services are in the Department of Education, we can deal more directly with problems concerning P.L. 94-142 and Section 504. To further assist in coordination, Secretary Hufstedler has established a Task Force on Equal Educational Opportunities for Handicapped Children. Through this task force the two responsible enforcement agencies have been developing coordinated systems of enforcement for the 1980-81 school year.

During this year the following joint activities will facilitate compatible enforcement of the two mandates by the Federal government:

- A system has been developed for information sharing regarding compliance reviews conducted by OSE and OCR.
- Data which have been collected specifically by OCR will be utilized by OSE in helping to determine potential areas of non-compliance with the statute. In addition, future joint data collection activities have been discussed.
- OSE and OCR have arrived at a common agreement on fourteen priority compliance areas under both P.L. 94-142 and Section 504 which should be the focus of compliance reviews during the coming school year.
- OSE and OCR have an agreement which defines their roles and provides for joint reviews of P.L. 94-142 and Section 504 by the Spring of 1982.
- A system has been developed for referral of matters to the U.S. Department of Justice under the various enforcement options available to OCR and OSE under current statutes.

23. WHAT HAVE BEEN THE THREE MAJOR AREAS OF PROGRESS, AND THE THREE MAJOR PROBLEM AREAS, IN THE IMPLEMENTATION OF PUBLIC LAW 94-142?

There have been a number of accomplishments under the Act. Three of these areas of progress which have been most striking are: the increases in the number of children served, the increases in the quality of services provided, and the initiation of services to preschool children.

In the area of service increases, more than one million children have been added to the special education count since the inception of P.L. 94-142, even in the face of declining school enrollment. Second, all of these children have an IEP and many are receiving additional related services. Still others are now participating in physical education, the arts, and numerous extracurricula activies. As aptly stated by a State Director of special education, his State had "made more progress in upgrading and developing quality education opportunities during the last four years than over the past forty years." Finally, in the area of preschool education, although not mandated by the Act, many states are supporting services with Part B funds as well as with funds provided by Section 619.

The three major problem areas are: the need to improve federal compliance activities, training needs, and the need to increase the effectiveness of the IEP process. In terms of compliance activities, the OSE is working to improve four basic components: data collection, enforcement, policy development, and technical assistance. Second, training -- particularly training for regular educators -- remains a critical problem. Training difficulties are compounded because of the complex cooperation needed at the local, State, and Federal level in order to provide the information and skill necessary to better integrate handicapped children within the public schools. And finally, the IEP process must be made more effective with greater emphasis placed on parental involvement and participation. Again, cooperation and imagination are required within the local, State and Federal activities in order to effectively implement these procedures at the local level.

24. SEVERAL WITNESSES HAVE INDICATED THAT BECAUSE OF WIDESPREAD MISUNDERSTANDING AT THE FEDERAL LEVEL OF THE EXTENT TO WHICH SEAs AND LEAs ARE REQUIRED TO PROVIDE SERVICES UNDER 94-142, EDUCATION DOLLARS ARE BEING STRETCHED TO PAY FOR SERVICES NORMALLY PROVIDED BY OTHER HUMAN SERVICE AGENCIES. WHAT SPECIFIC STEPS IS THE DEPARTMENT OF EDUCATION TAKING TO INSURE THAT THIS MISUNDERSTANDING WILL NOT CONTINUE?

We agree that there has been some misunderstanding of the extent to which SEAs and LEAs are required to provide services under P.L. 94-142. Under the law, States must assure that they will make available a free appropriate public education to all handicapped children. States have overall accountability for the education of these children. However, this responsibility does not limit public educational agencies to their own funds in order to pay for services that must be made available to handicapped children. It was assumed by the Congress that other available sources of support would continue to be tapped. The regulations governing Part B clearly mandate that each State use whatever State, local, private, and Federal sources of support are available in the State to pay for services required.

We currently have under consideration policy clarifications in the area of mental health services and catheterization services to handicapped children. These clarifications will help to insure that some of the misunderstanding of the extent to which SEAs and LEAs are required to provide services under P.L. 94-142 will not continue. It is our intention to provide opportunities for public comment into the process of such policy development where appropriate, so that the concerns of all will be taken into consideration.

Furthermore, we are taking steps to insure that education dollars will not have to pay for services normally provided by other public agencies. These steps include:

-development and dissemination of Federal interagency agreements assuring continuation of services traditionally provided by agencies that receive funding through Titles XIX and XX of the Social Security Act and the Mental Health Services Act.

-development and promotion of models for State and local interagency collaboration.

In addition, we believe that it might be necessary for the Congress to give additional statutory direction to other agencies concerning their responsibilities for providing related services.

25. IT HAS BEEN BROUGHT TO THE SUBMOMMITTEE'S ATTENTION THAT SOME INSURANCE CARRIERS ARE DENYING PAYMENTS FOR CLAIMS BECAUSE THEIR POSITION IS THAT PUBLIC LAW 94-142 MANDATES THAT CERTAIN SERVICES BE PAID FOR BY THE STATE. MAY WE HAVE YOUR COMMENTS ON THIS SITUATION?

We too are aware of this situation. Recent letters from parents informed us that insurers have refused to pay claims for related services and have directed these parents to seek payment for such services from the schools. Most major insurers who write group coverage include so-called "government exclusion" clauses as standard policy language which generally preclude payment for expenses incurred for services or benefits provided under any law of a government. A number of major insurers have taken the position, based on these exclusion clauses, that payments for related services are not covered since school districts are required to provide or pay for such services under P.L. 94-142. This is a complex issue which is currently under review. We expect that a policy statement will be published in the near future regarding the extent to which private insurance proceeds may be used to cover costs incurred in providing a free appropriate public education.

While we have no authority to preclude insurance companies from negotiating express provisions in insurance contracts, we have relied upon provisions in our regulations in the past to support the position that P.L. 94-142 does not modify insurers' obligations. Our regulations make clear that a State's obligation is to ensure that services are provided (not necessarily to shoulder the full cost of providing services itself) and specificially disclaim any intent to displace insurance coverage. We have assisted school systems by indicating that P.L. 94-142 specifically allows States to use a variety of sources of support including private sources to meet their obligations under the law. We have assisted parents by clearly maintaining in letters to parents that where insurance carriers do not provide payment for services required by a handicapped child as part of his/her appropriate public education, a State education agency is still responsible for insuring that a free, appropriate public education is made available to the child.

26. IT HAS BEEN BROUGHT TO THE SUBCOMMITTEE'S ATTENTION THAT THERE IS CONFUSION ABOUT WHAT MAY BE CONSIDERED A RELATED SERVICE AND WHAT MAY BE CONSIDERED A "MEDICAL SERVICE". WHAT PROGRESS IS OSE MAKING TO RESOLVE THESE POLICY ISSUES?

The regulations define special education as "specially designed instruction" and related services as "supportive services required to assist a handicapped child to benefit from special education." Related services would, therefore, be largely non-instructional and include some services that have been traditionally thought of as medical or health services. We recognize that there is a need for clarification and a Secretarial Task Force is working on this matter.

"Medical services" is defined in the P.L. 94-142 regulations as those "services provided by a licensed physician to determine a child's medically related handicapping condition which results in a child's need for special education and related services." When the term "medical service" is used outside of this regulatory definition, then it can often refer to a broad array of services, including some of the health related services which are specifically listed in P.L. 94-142 as "related services." Thus, because there is no specific listing of non-diagnostic medical services or health-related services which could not be "developmental, corrective, or supportive" in assisting a handicapped child to benefit from special education, there may sometimes be questions as to whether or not a health-related service is a "related service" under P.L. 94-142. This too is being deliberated by the Task Force. Two recent examples of progress specifically in the medical services area are policy interpretations with regard to psychotherapy and catheterization which we expect to be issued shortly.

We believe that this process will assure deliberate progress in achieving essential clarifications in each of these matters.

27. DURING THE 1979 HEARINGS ON THE RANDOLPH-SHEPPARD ACT, WITNESSES COMMENTED ON THE LACK OF PROFESSIONAL STAFF FOR THE RANDOLPH-SHEPPARD PROGRAM. HOW MANY PROFESSIONAL STAFF ARE WORKING FULL TIME ON THIS PROGRAM? PART TIME? WHAT ARE YOUR PLANS FOR INCREASING THE RANDOLPH-SHEPPARD STAFF?

There are four full-time professionals in the Rehabilitation Services Administration (RSA) who work full time on this program. At least 13 professional staff members work part-time on this program and the time devoted to this effort is equivalent to 4.95 full time positions.

We plan to fully provide for the staff needed to administer the program when the overall RSA reorganization plan is completed. We anticipate that this plan will be submitted to the Secretary for approval by December 1, 1980.

28. WITNESSES HAVE ALSO MENTIONED THE CRITICAL LACK OF PROGRAMMING FOR HANDICAPPED CHILDREN AT THE SECONDARY SCHOOL LEVEL. WHAT ACTIVITIES IS OSE PLANNING TO ADDRESS THIS SITUATION?

The Office of Special Education is involved in numerous activities designed to provide a continuum of services to secondary school-age handicapped children as they leave school and enter our communities as adults. Our major emphases have been in encouraging collaboration among provider agencies, providing technical assistance to advocacy and consumer groups, and funding demonstration projects through our discretionary programs.

Our collaborative efforts have included national level meetings, dissemination projects, development of model inter-agency agreements, and joint policy clarifications of State education agencies and rehabilitation agencies. We have developed joint working agreements with the Office of Vocational and Adult Education. Our staff is also cooperating with OCR in developing and implementing monitoring procedures for vocational education programs charged with serving handicapped individuals.

Our technical assistance activities consist of publications for use by service providers and consumers, as well as involvement in action-oriented groups. For example, an OSE sponsored publication entitled Federal Assistance Guide for Vocational and Career Education for the Handicapped contains descriptive abstracts of all Federal assistance in this area, and provides specific recommendations to individuals regarding proposal development. Another technical assistance manual provides guidance in establishing interagency cooperation at the State level.

Finally, We have provided approximately $4 million in discretionary funds for projects aimed at improving services to secondary-aged handicapped youth. Of this amount, $ 2.7 million of addressed personnel needs and $1.3 million supported research activities.

Our efforts in this area will expand. Assisting handicapped students make the transition from school programs to meaningful careers is one of our major priorities.

29. DOES BIA HAVE AN APPROVED FY 81 STATE PLAN? COULD YOU GIVE US A STATUS REPORT ON THE IMPLEMENTATION OF P.L. 94-142 WITH REFERENCE TO DELIVERY OF SERVICES TO HANDICAPPED INDIAN CHILDREN?

To date BIA has not submitted a State Plan for FY 1981. The FY 1980 State Plan required revisions which were recently delivered to OSE. Although the plan provides additional clarification and information requested, we are still working with BIA to ensure the assurance of all necessary guarantees of P.L. 94-142.

We have found the BIA to have serious implementation problems. We have visited selected area offices of BIA and have found an absence of appropriate special education and related services available for handicapped American Indian children. Many children remain unserved or underserved. In the program administrative reviews of the BIA programs, we have directed BIA to effect certain corrective actions. These corrective actions are related to the findings of the administrative reviews. In the area of child identification and right to education policy, for example, BIA has been directed to increase child find efforts and shorten waiting lists for placement. Timelines have been exceeded in documenting these corrective actions.

We hope that the recent modifications in the 1980 BIA State plan evidence an effort by BIA to correct past difficulties. We intend to work closely with BIA to ensure that further actions are taken, as necessary, to comply with all aspects of P.L. 94-142.

30. AS YOU KNOW, PARENTS FROM PUERTO RICO TESTIFIED BEFORE THE SUBCOMMITTEE IN OCTOBER OF 1979 AND EXPRESSED CONCERNS ABOUT THE LACK OF SERVICES FOR THEIR HANDICAPPED CHILDREN. HAS THIS SITUATION IMPROVED? HOW IS THE IMPLEMENTATION OF PUBLIC LAW 94-142 PROGRESSING IN OTHER TERRITORIES?

We feel that the situation in Puerto Rico has improved since October of 1979, but we are continuing to work with Secretary Lacot and other Puerto Rican officals to ensure that EHA-B is effectively implemented.

The recent adoption of new policies and procedures by Puerto Rico and the recent action by the Governor's office to make an additional $10 million available to the Commonwealth's special education program annually are seen as very positive moves by Puerto Rico to alleviate the implementation problems, but we continue to have difficulty in obtaining documentation that the procedures have been fully implemented. We have scheduled an on-site visit to San Juan on November 10-14, 1980 in order to verify the completion of outstanding corrective actions to be taken by the SEA to insure the availability of a free, appropriate education to Puerto Rico's handicapped children.

In the Pacific Basin area, only Guam has made significant progress in the full implementation of the requirements of P.L. 94-142. American Samoa has developed some good programs for the education of handicapped children, but there are still handicapped children not in school there. The Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific both have unidentified and unserved children. With the exception of Guam, all of the Pacific areas need trained special education personnel of all types.

31. WITNESSES ALSO STATED THAT PARENT KNOWLEDGE OF THEIR RIGHTS UNDER PUBLIC LAW 94-142 IS A CRITICAL FACTOR IN TERMS OF THEIR HANDICAPPED CHILD RECEIVING A FREE APPROPRIATE PUBLIC EDUCATION. WHAT ACTIVITIES HAS OSE INITIATED TO INCREASE PARENT AWARENESS OF PUBLIC LAW 94-142?

Through Closer Look, a national information center for parents of handicapped children, OSE has for the past five years sponsored national television "advertisements" informing parents of the law and of their rights. These announcements represent about $20 million in free public service air time every year. Closer Look also responds to parent inquiries from throughout the country, conducts workshops on the law, and publishes a newsletter which reaches approximately 300,000 parents and professionals.

OSE's training program supports projects involving 10 parent coalition groups made up primarily of parents of handicapped children. These groups dispense information on the law and directly train other parents to understand their rights and to use the law effectively. It is expected that approximately 8,000 parents will be trained by these coalitions during 1980. In addition to the coalition project, approximately 33,000 parents have been trained in conjunction with regular classroom teachers in 39 Regular Education Inservice (REGI) projects.

OSE's Direction Service program sponsored 12 demonstration projects in urban and rural areas that help parents get action on the needs of individual handicapped children through the various services available in the community. Parents are informed of their rights under P.L. 94-142 and how best to go about obtaining them.

The requirement of P.L. 94-142 that all handicapped children be identified was a significant factor alerting parents to the law and its implications. OSE's Regional Resource Centers worked directly with the State education agencies to help them initiate and refine these "child find" efforts. This year, 12 such resource centers will be operating throughout the country and will develop spheres of expertise in various aspects of the law. Areas of particular attention that will directly benefit parents will be:

- Identification, screening, and appraisal -- to find handicapped children, appraise their needs and place them in appropriate settings.
- Procedural safeguards -- to help parents become familiar with their rights under the law and with the due process procedures.
- Special populations -- to safeguard the right of special populations of handicapped children to appropriate education programs.

We are also gathering information on notification procedures and hope that the results of this study will provide information on improved methods for local education agencies to communicate to parents their rights under P.L. 94-142.

Senator **Randolph**. Thank you, Dr. Martin.

Mr. Ahart, please identify yourself and your colleagues at the witness table.

STATEMENT OF GREGORY J. AHART, DIRECTOR, HUMAN RESOURCES DIVISION, U. S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JOE E. TOTTEN AND ALVIN S. FINEGOLD

Mr. **Ahart**. Thank you, Mr. Chairman.

With me today is Mr. Joe Totten from my staff and Mr. Alvin Finegold from our Seattle regional office, who participated heavily in our work in the handicapped area.

I have a fairly lengthy statement, Mr. Chairman. With your permission, I would like to summarize it.

Senator **Randolph**. If you would summarize your statement it would help us. It is not that we do not in fact wish to be here over a long period of time, but I of necessity am going to have to be absent. I think Senator Stafford can stay a reasonable amount of time. So, please address those points which are highlighted in your testimony. All of it will be included as if given.

Mr. **Ahart**. Thank you, Mr. Chairman. We are pleased to have this opportunity to comment on the Public Law 94-142 program. As you know, we have reviewed this program. We do expect to issue a final report to Congress within a matter of weeks.

Senator **Randolph**. Please identify your colleagues.

Mr. **Ahart**. Yes. Mr. Joe Totten is on my right. He is in the Human Resources Division. Mr. Alvin Finegold, on my left, is from our Seattle regional office.

The act generally requires that a free appropriate public education be available for all handicapped children age 3 through 18 by September 1, 1978, and age 3 through 21 by September 1, 1980. It also requires schools to evaluate a child's special needs and determine the most appropriate educational environment, develop an individualized education program tailored to the needs of the child, involve fully the child's parents in the educational decision process, and, finally, educate a handicapped child along with nonhandicapped children to the extent that it is in the handicapped child's best interests.

We made our review in 1978 and 1979 at the Department of Education here in Washington and at State educational agencies, local districts, and local schools in 10 States. Mostly, we were at the school districts during 1978.

Before Public Law 94-142 was enacted, BEH estimated that about 12 percent of the school-age population were handicapped and needed special education services. The 12 percent estimate currently translates to about 6.2 million children.

As of December 1978, however, after several years of searching, the States reported counting about 3.9 million handicapped children. The difference, about 2.3 million, are children who, if the bureau's estimate is correct, are handicapped but have either not been identified or accounted for under the program.

This difference has generated controversy. The bureau, in defense of its 12 percent estimate, asserts that the States' childfind efforts have not been adequate. State officials, researchers, and others contend that the bureau's estimate is significantly overstated.

In our opinion, the bureau's estimate was questionable when provided to the Congress. It still has not been validated. A number of reports prepared for the Federal Government before 1975 clearly pointed out the incompleteness, noncomparability, and other reliability limitations of the handicap prevalence estimates available at that time.

Although the bureau's estimate was based on data of questionable validity, the bureau continues to use it. In a January 1979 report to the Congress, the bureau concluded that over 2.3 million handicapped children remained to be served. When it prepared this report, the bureau had a draft study which, using more up-to-date information, estimated that about 7 percent rather than 12 percent of children ages 3 to 21 were handicapped.

Actual State counts for the fiscal years 1977 through 1979 averaged about 7.5 percent of the school population.

States and local education agencies readily acknowledge that some handicapped children have yet to be identified. However, they believe that the number remaining unidentified is relatively small and is far less than the bureau's estimate, given in 1979, of 2.3 million.

In September 1978, the bureau launched a major new initiative to reduce the discrepancy between the number of handicapped children counted and its 12 percent estimate by trying to get the States to increase the count under Public Law 94-142.

However, available documents indicate that the bureau had not pointed out or cautioned the States about the need to maintain balance; that is, to carefully evaluate and classify children so that those not eligible are not labeled as handicapped.

Overcounting children can have at least two adverse consequences. First, State counts would be inflated and the appropriation and distribution of Federal funds could be affected. Second, children would be erroneously labeled as handicapped, which could have a stigmatizing effect which could be very difficult for the children to overcome.

Our second point concerns eligibility of certain children.

Information obtained in our review raised questions about the eligibility of children with minor impairments who may not require special education as that term is defined in the law. These eligibility questions are especially applicable to children who require only speech therapy, which account for about 1.2 million of the 3.7 million counted for funding as of December 1978.

The Education of the Handicapped Act requires that a child have one of nine impairments requiring special education and related services to be counted for Federal funding as handicapped.

Special education is instruction that is specially designed to meet needs that cannot be met in a regular classroom program. Related services are those that may be needed to correct, treat, or reduce the impact of the child's impairment and thus improve the child's ability to benefit from special education. The law explicitly lists speech pathology or therapy as a related service.

It is not entirely clear whether, in the absence of special education, children receiving only speech therapy or the other related services were to be considered eligible under the act.

Program regulations attempt to clarify the eligibility question by stating that, ordinarily, children who are receiving only related services are not eligible for the program. However, a service specifically listed in the act as a related service may be considered as special education if the service meets the act's general definition of special education and is considered special education rather than a related service under State standards. In a key provision, the regulations require that to be considered as handicapped a child must have an impairment which is severe enough to adversely affect the child's educational performance. However, the bureau had not established criteria for applying the adverse effect requirement, nor did its regulations require the States to establish their own criteria.

Bureau officials told us that they had not issued any guidance to the States on the nature and the meaning of the adverse effect requirement, since no State or local agency had specifically sought an interpretation of the requirement.

According to officials in 18 of 28 local education agencies where we discussed the issue, the local agency policy or practice did not require that a child's speech impairment adversely affect his or her educational performance to count the child for funding. Officials also stated that the effect that a child's speech impairment has on educational performance is not readily apparent and, in many cases, it would be difficult or time consuming to prove adverse effect.

Four States we visited specifically allowed local agencies to count speech-impaired children for funding purposes even if the impairment did not adversely affect their educational performance. Two other States specifically instructed their local agencies to count such children.

Most children classified as speech impaired spend significantly less time receiving services outside the regular classroom than do other handicapped children and rarely, if ever, is the speech-impaired child's regular classroom program modified.

Accordingly, there are questions on whether most of these children would have met the eligibility requirement in program regulations had it been applied.

Also, some local agency officials told us that the individualized education program process was not appropriate for children who receive only speech therapy. They complained, among other things, that the IEP process forces a school district to label children as handicapped who are really not handicapped, that preparing and processing the IEP often takes almost as much time and effort as remedying the child's speech defect, and that in the past some local agencies stopped providing speech services altogether for several days or weeks to prepare and process IEP's.

We do not know exactly how many of the children classified as speech impaired might not have met the adverse effect test. Officials at 10 of the local agencies told us that, if they applied the adverse effect test, their count of speech-impaired children would be substantially reduced by anywhere from 33 to 75 percent.

Mr. Chairman, we are not questioning whether certain children need speech therapy. What we are questioning is whether the Congress intended that all children receiving speech therapy be served under the Public Law 94-142 program as handicapped children and be counted for purposes of fund allocation.

I will turn now to the IEP requirements.

The law requires that local agencies establish an individualized education program for each handicapped child.

Because of some confusing actions by the Office of Education during the writing of the regulations, some local agencies were led to believe that an IEP need include only those special education and related services that were currently available in the local agency. Although the bureau later clarified this matter, many local education agencies continued to limit the services listed in the IEP's.

Local agency officials in 15 of the 28 agencies where we discussed this matter claimed that their individualized education programs described all services needed regardless of current availability. However, we found that that programs omitted needed services shown on other child records.

Officials in the other 13 local agencies candidly admitted that a child's IEP would not show needed special education or related services that the local agency did not or could not provide.

Local agencies had considerable difficulty preparing individualized education programs that met the law's requirements. In mid-1978 we reviewed 456 such programs prepared by 23 local agencies in six States. Overall, 78 percent of the individualized education programs did not meet the act's content requirements. Sixty-five percent lacked information on one or more elements, and another 13 percent had vague or general statements.

In addition to the newness of the individualized education program requirements, one reason the local agencies did not meet the requirements was the lack of guidance and instructions from the bureau.

I will turn now to the important objective of the act, which is to make free appropriate public education available to every handicapped child.

Officials in 16 of 21 local agencies where we discussed program goals candidly admitted that they did not expect to be able to provide an appropriate education to their handicapped children age 3 to 18 for at least 3 to 6 years beyond the September 1, 1978, deadline.

Inadequate funding was by far the most common reason cited. The officials were often relying on increased Federal funds to finance the cost of increased services. Few expected State and local funds to increase sufficiently to cover all costs in the near future.

At the time of our fieldwork, many State agencies had not adequately fulfilled their responsibilities for insuring the proper implementation of the law. Technical assistance by State agencies was often late and ineffective. State agencies had done little monitoring.

Many State agencies recognized the increased responsibilities and the need for additional special education staff to administer the program. However, few requests for additional State-funded positions had been approved at the time of our fieldwork.

Since each State participating in the program must submit an annual program plan containing assurances that the State will carry out the provisions of the act, a vehicle exists that would enable the Department to assess, at least in part, the adequacy and capability of the State agency to fulfill its responsibilities.

In our opinion, some of the problems in implementing the program might have been avoided or reduced had the bureau adequately or promptly carried out its management responsibilities.

For example, the legislation required that regulations be published by January 1977. Proposed regulations were published in December 1976, but final regulations were not published until August of 1977, only 39 days before the October 1, 1977, date that States and local agencies were to be in full compliance with most of the act's procedural requirements.

The act also requires the Department to provide States with technical assistance and training, to approve State program plans, and to monitor State and local agency program activities for compliance with the law and regulations. Our review indicated that the bureau had problems performing these activities, thus contributing to the startup problems.

Mr. Chairman, our draft report on the implementation of the program contained a number of proposals which, we believe, if properly implemented, should help to improve the program. The Department has provided to us written comments on all of our proposals.

One proposal was to the Congress to clarify whether and under what conditions children who are receiving only speech therapy or other services currently cited in the law as related services are eligible for coverage under the program. In resolving this matter, the Congress should consider whether current regulations represent a reasonable interpretation of the congressional intent.

The Department did not concur with this proposal. It believed it is already clear that children who receive only speech therapy services are eligible.

Although it may be clear to the education community, as the Department asserts, in our opinion it is not clear in the law or in its legislative history.

We are also proposing that the Congress consider the conflict between the statutory purpose and timetable for providing each handicapped child with free appropriate public education and the problems States and local agencies are having in meeting these objectives. If considerable additional delays in reaching the goals are not acceptable, the Congress may wish to consider providing incentives to stimulate increased State and local funding or perhaps increased Federal funding for this program. If the Congress finds that existing goals and deadlines are too stringent or too optimistic, it may wish to consider modifying the act's timetables or scope of coverage.

The Department stated that it believed that the Congress has undertaken an extensive examination of both the statutory purpose and the problems encountered by the States and local agencies in meeting the purposes and timetables of the act.

We certainly are aware of extensive congressional hearings that have been held, although we believe that additional perspective and direction should be provided by the Congress to all levels of the educational community, particularly since both the 1978 and 1980 deadlines for compliance with the act have now passed.

In our draft report we also included a number of proposals to the Secretary of Education. These proposals I have included as an attachment to my statement.

Regarding the controversy on the estimated number of handicapped children, the Department agreed with our proposals to fully evaluate the effectiveness of local education agency programs and processes for identifying, evaluating, and serving all handicapped children needing services; to assist States and local agencies to eliminate deficiencies; and to reconsider the validity of the 12-percent prevalence estimate. However, the Department did not agree that it should discontinue, at least temporarily, the use of the 12-percent rate as a basis for encouraging States to increase the number of children counted and served.

The Department stated that it recognizes that the 12-percent estimate was not definitive, but to date there is no compelling data that would justify revising the estimate.

Regarding the need to resolve questions on eligibility criteria for children receiving only speech therapy, the Department agreed with our proposals to define the terms adverse effect and educational performance as they relate to children's eligibility and monitor and enforce the adverse effect on educational performance requirement. It also agreed with our proposals to improve the individualized education program process.

Regarding the need for improved State management of the program, the Department did not concur that States should be required to document in their annual program plans that they are able to meet the commitments in their plans and carry out their responsibilities under the law. The Department did agree, however, that Federal administration of the program needed strengthening.

That concludes the summary of my statement, Mr. Chairman. We will be happy to respond to any questions you have.

Senator STAFFORD. Thank you very much, Mr. Ahart, for your very helpful testimony.

At the conclusion of any questions we may direct to you now, I am going to place in the record a letter to me from Representative Susan Auld, who is a member of the Vermont General Assembly. That letter is dated August 28, 1980, and bears on the general problem we are examining today.

[The letter referred to follows:]

STATE OF VERMONT
HOUSE OF REPRESENTATIVES
MONTPELIER
05602

August 28, 1980

Sen. Robert Stafford
Room 521
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Stafford:

I am writing in order to leave you with some written impressions of my principal concerns about special education. I appreciate the opportunity to meet with you, and hope that this letter will help clarify any points that I am not able to make clearly to you in person.

My concern is with the impact of the federal laws commonly called "94-142" and "Section 504". I am principally concerned both about the lack of promised funding to implement these laws and also with the manner in which they are being administered from Washington.

When public law 94-142 was passed, there were promises in its text of a gradually increasing federal sharing of the costs incurred by special education. Since then, not only has the federal government failed to keep up with its promised payments, but the states now appear forced by the legally parallel "Section 504" to provide these kinds of services whether or not they elect to participate in the funding offered by the supposedly voluntary program under "94-142".

Unfortunately this federal funding failure has not been accompanied by any meaningful limitations on the ambitions of the program. School districts are still required by federal law to provide services that many believe ought to be discretionary under these circumstances. In fact, the law seems so broadly stated that in many cases the services which a handicapped child can claim seem limited only by the imagination of the child's advocate. Even at the promised funding level, I doubt that this situation could long endure, but under present funding, it is quickly becoming intolerable.

I suggest that the Congress ought to reexamine public law 94-142 in light of its failure to fulfill its financial promises. I think such a reexamination ought to consider placing limits on the present requirements, perhaps by making some optional, and by eliminating others entirely.

My second principal concern is the manner of federal administration of the law. On at least four occasions in recent years I am aware of incidents where policy guidance has come from Washington that I believe to be inconsistent with the intent of Congress.

In 1977, the Department of Health, Education and Welfare adopted regulations concerning the identification of children with a particular group of handicaps called "specific learning disabilities". The Congressional record clearly indicates that Congress feared that the imprecise definition for this category of handicap could lead to abuse. Congress imposed a one-sixth "cap" on these children, saying that no more than one handicapped child in six in any state could be classified as learning disabled. However, Congress also provided that this "cap" would be repealed from the law when the Secretary of H.E.W. adopted regulations which "establish specific criteria for determining whether a particular disorder or condition may be considered a specific learning disability" and which also described "specific diagnostic procedures" which are capable of diagnosing these conditions. Furthermore, the regulations were supposed to develop a method of ensuring that local and state agencies were adhering to these guidelines.

The regulations actually adopted fell far short of these goals. Rather than contain a list of recognized disabilities, or "specific criteria" for their evaluation, the regulations merely repeated the statutory definition. Rather than explaining specific diagnostic procedures, the regulations grandly authorized classification of all children who have "severe discrepancies between achievement and intellectual ability" in any of a number of academic performance areas. This broad authorization failed to mention any of the original limiting factors in the statutory definition such as that "learning disability" was not intended to make up for past environmental or social disadvantages. The procedures for ensuring compliance with these substantive standards amounted merely to a requirement that local records be kept. Nothing apparently required the state to periodically audit these records and certify that the prescribed standards were indeed being followed.

This looseness in the regulations has created a great latitude for local school officials in determining whether or not a child has a learning disability. I believe that in many cases the term "learning disabled" has become virtually synonymous with the older term "slow learner". As a result, the original one-sixth "cap" has been greatly exceeded. Vermont now has 36 percent of its handicapped students classified as learning disabled, and a review of the 1979-80 school year data shows that of the 50 states only New York has not violated the original limitation. The national average is now 31.7 percent, nearly double the original upper limit.

Sen. Robert Stafford
Washington, D.C.

August 28, 1980
Page 3

More recently, the Department of H.E.W. approved a "child count" procedure in Vermont that permitted the state Department of Education to create child count data right here in Montpelier, and based upon only the most indirect kind of evidence submitted by local school districts. The school districts themselves never reported directly on how many children they had found in each particular category of handicap, and as a result, I believe our state statistics concerning the frequency of various kinds of handicap are highly unreliable. I think this effectively emasculates the Congressional requirement for periodic statistical reports. Yes, the reports are filed, but the data on them in some instances seem of questionable value.

At about the same time, I understand that H.E.W. approved a Vermont policy that allowed children to be classified as "handicapped" even though they did not fall into any of the nine statutorily listed categories of handicap. At present, a Vermont child who is substantially behind his peers in one or more subject areas can be classified as handicapped on that basis alone, and without any reference to whether he or she belongs to any of the nine federal categories. The Director of our Special Education Division has virtually said that she hopes she never has to limit special education enrollments to these categories, and it appears that H.E.W. (now the U.S. Department of Education) is the last place that such an impetus will likely come from. If further proof of this point is needed, federal law requires that federal money erroneously spent on non-handicapped children ought to be repaid to the Treasury. I understand that Vermont has never repaid a dollar, and you might be interested in investigating whether any other states have done so.

Most recently, the Special Education Division orally advised our state Department of Education that when a parent desires to have an independent evaluation performed at public expense, the school district must give the parent a list of "more than one" possible site for the evaluation. This advice was repeated to the Vermont Legislative Council staff. Yet when asked for written confirmation of this statement, H.E.W. took over three months with the request, and intercession from your office was finally necessary to get a reply. The reply finally retracted the earlier asserted oral policy.

These four incidents demonstrate to me that the people in the U.S. Education Department have repeatedly attempted to maximize their influence and the enrollment of pupils in their programs, regardless of Congressional intent. As a result, I believe our special education program in Vermont to be in very serious trouble, and trouble that could have been avoided. My only hope is that some of these problems can be worked out amicably without creating the risk of overreaction. If they cannot be worked out, I am afraid that the whole structure may topple. In that event, all of the needed services which we are finally providing at long last to the truly handicapped would be swept away with the chaff from the rest of the program. I hope that I can enlist you in my attempt to find a method of providing a fair level of service to the truly needy without also unduly burdening the system.

Very truly yours,

Susan Auld

Rep. Susan Auld
Washington-1

SA/cm

Senator **Stafford**. I am advised, Mr. Ahart, that our questions to you will be in writing. We would appreciate if they could be responded to at a reasonably early hour so that we can make them a part of this committee record.

If you were here in time, you probably heard Dr. Martin reserve the right to comment further on testimony. He may wish to comment on some aspects of what you told us here this morning.

For the committee, I can express our appreciation to you for being here and helping in our efforts to improve Public Law 94-142, and when the next Congress gets here we can try to get that done.

Mr. **Ahart**. Thank you, Mr. Chairman.

Senator **Stafford**. The next meeting of the Subcommittee on the Handicapped of the Labor and Human Resources Committee will be at the call of the chair.

Senator **Randolph**. Senator Stafford and I join in expressing appreciation for your willingness to help us to assess the progress of the implementation of this program for which we have high hopes.

There are, of course, mistakes being made along the way that we can correct.

I think it would be the desire of Senator Stafford and all members of the subcommittee that you, Mr. Ahart, at a later date comment on Dr. Martin's testimony. Although you have seen the statement, there were colloquys today. If you would do that in writing, then I would ask Dr. Martin also, if he desires to comment, to do so in writing to the subcommittee on the testimony that you have given. Would that be agreeable?

Mr. **Ahart**. That would be perfectly satisfactory, Mr. Chairman.

[The prepared statement of Mr. Ahart, GAO's response to Senator Randolph's questions, and additional material supplied for the record follow:]

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 9:30 A.M., EDT
SEPTEMBER 10, 1980

STATEMENT OF GREGORY J. AHART, DIRECTOR HUMAN RESOURCES DIVISION BEFORE THE SUBCOMMITTEE ON HANDICAPPED OF THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES ON THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

Mr. Chairman and Members of the Subcommittee. We are pleased to have this opportunity to comment on the results of our review of the implementation of the Education for All Handicapped Children Act of 1975, commonly referred to as the Public Law 94-142 program. Until May 1980, when responsibility for the program was transferred to the Office of Special Education and Rehabilitative Services in the new Department of Education, the 94-142 program was administered by the Office of Education's Bureau of Education for the Handicapped (BEH). A draft of our report was sent to the Secretary of Education in June 1980 and the Department's written comments have been received. We expect to issue the final report to the Congress in several weeks.

THE PUBLIC LAW 94-142 PROGRAM

Public Law 94-142, dated November 29, 1975, amended the Education of the Handicapped Act (20 U.S.C. 1401 et seq.) to improve educational services in local public schools for children with mental, physical, emotional, and learning handicaps.

The act generally requires that a "free appropriate public education" be available for all handicapped children age 3 to 18 by September 1, 1978, and age 3 to 21 by September 1, 1980. The act also requires schools to (1) evaluate a child's special needs and determine the most appropriate educational environment, (2) develop an individualized education program (referred to as an IEP) tailored to the needs of the child, (3) involve fully the child's parents in the educational decision process, and (4) educate a handicapped child along with nonhandicapped children to the extent it is in the handicapped child's best interests.

From fiscal year 1977 through fiscal year 1980 the amount appropriated for the program increased from $315 million to $874 million. For fiscal year 1981, $922 million was requested. Over that same 5-year period the average grant per handicapped child increased from $72 to $239.

As of December 1, 1979--the most recent count--the number of handicapped children served was about 4 million. Eighty-three percent of these children fell into three categories--speech impaired, learning disabled, and mentally retarded.

SCOPE OF REVIEW

We made our review in 1978 and 1979 at Department of Education headquarters in Washington, D.C., and at State education agencies, local school districts, and schools in 10 States--California, Florida, Iowa, Mississippi, New Hampshire, Ohio, Oregon, South Dakota, Texas, and Washington. In fiscal year 1979 these States reported a combined total of about 1.1 million handicapped children, or nearly 30 percent of the national 94-142 childcount of about 3.7 million. We visited a total of 55 State, local, and other activities, including 38 local school districts with reported enrollments ranging from 13 handicapped students to about 15,000 handicapped students.

CONTROVERSY ON ESTIMATED NUMBER OF HANDICAPPED CHILDREN

Controversy exists over BEH's estimate of the number of school-age handicapped children needing "special education" services--about 6.2 million--compared to 3.9 million children actually identified and reported by the States, as of December 1, 1978. Consequently, BEH is attempting to get States to increase the number of children identified and reported. We believe that BEH's efforts to increase the number of children counted and served have not been tempered sufficiently to avoid identifying and serving, as handicapped, children who do not warrant such treatment.

BEH estimates far exceed actual number of handicapped children reported by States

Before Public Law 94-142 was enacted, BEH estimated that about 6.7 million children, or about 12 percent of the school-age population, were handicapped and needed special education services.

Because of declines in school enrollments since the early 1970s and differences in the age ranges used to define "school age," the 12-percent estimate currently translates to about 6.2 million children. As of December 1978, however, after several years of searching, the States reported counting about 3.9 million handicapped children. The difference between this actual count and the BEH estimate amounts to about 2.3 million children who, if the BEH estimate is correct, are handicapped but have either not been identified or accounted for under the 94-142 program.

This difference has generated serious controversy among BEH, State officials, researchers, and others. BEH, in defense of its 12-percent estimate, asserts that the States' childfind efforts have not been adequate. However, State officials, researchers, and others contend that BEH's estimate is significantly overstated.

BEH gave the Congress statistics that were discussed in hearings in 1975, indicating that more than 8 million handicapped children up to age 21 (including 6.7 million age 6 to 19) required special education and related services, of which:

--About 3.9 million children (3.7 million age 6 to 19) were receiving an appropriate education.

--About 4.25 million children (3.1 million age 6 to 19) were receiving an inappropriate education or no education at all. Of these, about 1.75 million were said to be excluded entirely from schooling.

The Congress relied on the BEH estimate and also used the 12-percent estimate to develop a major control element in 94-142's entitlement formula. Under the law each State's childcount may be no greater than 12 percent of its total school-age population, age 5 to 17. This provision was included to assure that States would not overcount and mislabel children as handicapped.

In our opinion, the BEH estimate was questionable when provided to the Congress. The estimate still has not been validated. A number of reports prepared for the Federal Government before 1975, and used by BEH to develop its estimate, clearly pointed out the incompleteness, noncomparability, and other reliability limitations of the handicap prevalence estimates available at that time.

In addition to various studies, BEH had "counts" of the numbers of handicapped children in each State reported by State education agencies (SEAs) in the late 1960s. However, a 1970 BEH-funded study stated that in 39 States the counts were not counts at all, but projections based on national prevalence figures developed by a researcher in the 1950s.

Although its estimate was based on data of questionable reliability, BEH continues to use it. In a January 1979 report to the Congress, BEH concluded that since only 3.8 million handicapped children were being served by the States, over 2.3 million handicapped children remained to be served. When it prepared this report, BEH had a July 1978 draft study of prevalences of handicapping conditions prepared by SRI International which, using more up-to-date information, estimated that about 7 percent of children age 3 to 21 were handicapped. Also, the report concluded that BEH's 12-percent estimate was too high.

Actual State counts for fiscal years 1977, 1978, and 1979 averaged about 7.5 percent of the school population. Not only were the national averages well below BEH's estimate, but the counts of 57 of the 58 States and other grantees were also lower.

Although no reliable estimate of the number of unserved handicapped children exists, States and local education agencies (LEAs) readily acknowledge that some handicapped children have yet to to be identified. However, they believe that the number remaining unidentified is relatively small and is far less than BEH's estimate of 2.3 million.

BEH shows little concern for possible mislabeling and overcounting of children

In September 1978, BEH launched a major "new initiative" to reduce the discrepancy between the number of handicapped children counted and its 12-percent estimate by trying to get States to increase the 94-142 count.

BEH officials contacted at least 50 States and territories which counted less than 10 percent to "strongly urge" them to accept BEH technical assistance on increasing the childcount. BEH plans also called for asking States to set specific numerical targets for increasing their childcounts, and following this up with monitoring and assessment activities, including "careful review" of States' annual program plans before awarding grants, and "special site visits" to key States.

Furthermore, under the new initiative all BEH discretionary programs, which provide grants for such activities as technical assistance through Regional Resource Centers, model demonstration projects, and research and development projects, were to be refocused to emphasize finding and serving more handicapped children. BEH officials also contacted advocate groups, urging them to become more involved in finding and serving handicapped children. BEH has placed special national emphasis on increasing the count of speech-impaired children, a category which, as we discuss in the next section, already includes many children whose eligibility is unclear.

However, available documents indicate that BEH had not pointed out or cautioned States about the need to maintain balance--that is, to carefully evaluate and classify children so that those not eligible are not labeled as handicapped.

Overcounting children or improperly labeling them as handicapped can have at least two major adverse consequences. First, State counts would be inflated and the appropriation and distribution of Federal funds could be affected. Second, and even more important, children would be erroneously labeled as handicapped and this could have a stigmatizing effect that could be very difficult for the children to overcome.

QUESTIONS ON ELIGIBILITY CRITERIA NEED TO BE RESOLVED

Data obtained in our review raised questions about the eligibility of children with minor impairments who may not require "special education," as that term is defined in the law. Although these eligibility questions affect children with various types of impairments, they are especially applicable to children with minor impairments who require only speech therapy. Of the 3.7 million children counted for funding and served under the 94-142 program as of December 1, 1978, the largest group, about 1.2 million, were classified as "speech impaired" and were receiving only speech therapy. States were expected to receive about $253 million in fiscal year 1980 Federal grant funds for these children. These children included many who were receiving therapy for such impairments as lisping, stuttering, and word pronunciation problems (e.g., they said "wabbit" instead "rabbit," "pasketti" instead of "spaghetti," or "bud" for "bird"), as well as many children whose voice tones were low, high, nasal, harsh, or hoarse.

The law, its legislative history, and implementing regulations are unclear on whether all of these speech-impaired children should have been counted as handicapped for Federal funding.

Unclear definitions in the law and legislative history

The Education of the Handicapped Act, as amended, requires that a child have one of nine impairments for which he or she needs "special education and related services" to be counted for Federal funding as "handicapped."

According to the definitions from the act, "special education" is instruction that is specially designed to meet a handicapped child's unique education needs--needs which cannot be met through a regular classroom program and therefore require different or added instructional procedures. "Related services" are those supplementary services that may be needed to correct, treat, or reduce the impact of the child's impairment and thus improve the child's ability to benefit from "special education." The law explicitly lists speech pathology (often used interchangeably with the term speech therapy) as a "related service."

However, it is not entirely clear whether, in the absence of "special education," children receiving only speech therapy or the other services specifically listed in the act as "related services" were to be considered eligible under the act. House and Senate committee and conference reports on the bill that became Public Law 94-142 did not conclusively address the question, although the reports implied that the Congress may not have intended or designed the act to include children who have minor impairments developed from poor habits, their home environment, or slow development. Committee reports indicated also that the principal objective was to serve the more severely handicapped children and implied that children with mild handicaps, or those receiving only "related services," may not have been intended to be eligible. However, because of the absence of definitive guidance in the legislative history, we were unable to conclusively determine whether the Congress intended children with mild handicaps, or those requiring only "related services," to be covered under the act.

Although the eligibility of children receiving only "related services" is not specifically authorized in the act, program regulations provide that, under certain conditions, "related services" such as speech therapy, can be considered as "special education" and thus make a child eligible even though he or she is not receiving any other services.

Insufficient guidance in program regulations

Program regulations attempt to clarify the eligibility question by stating that, ordinarily, children who are receiving only "related services" are not eligible for the program. The regulations provide, however, that a service specifically listed in the act as a "related service" may be considered as "special education" if (1) the service meets the act's general definition of "special education" and (2) is considered "special education" rather than a "related service" under State standards. In a key provision, the regulations require that to be considered as "handicapped," a child must have an impairment which is severe enough to adversely affect the child's educational performance. However, BEH had not established criteria for applying the adverse effect requirement, nor did its regulations require the States to establish their own criteria.

During our fieldwork BEH officials told us that they had not issued any guidance to the States on the nature and the meaning of the adverse effect requirement, since no State or LEA had specifically sought an interpretation of the requirement.

LEAs are not applying an adverse effect test

According to officials in 18 of 28 LEAs where we discussed the issue, LEA policy or practice did not require that a child's speech impairment adversely affect his or her educational performance to count the child for 94-142 funding. It appeared that most children whose speech attracted attention in any way, or caused a social or behavioral problem, were receiving speech therapy and were being counted for 94-142 funding. LEA officials also stated that the effect that a child's speech impairment has on educational performance is not readily apparent and, in many cases, it would be difficult or time consuming to prove adverse effect.

In contrast to Federal program regulations, the regulations of at least four States we visited specifically allowed LEAs to classify children as speech impaired for State funding purposes even if the impairment did not adversely affect their performance in the classroom. Two other States specifically instructed their LEAs to count all children receiving speech therapy in the 94-142 childcount.

Thus, some LEAs were providing speech therapy to children under State or LEA eligibility criteria that did not call for a test of adverse effect on educational performance, as do the Federal regulations.

Most speech-impaired children might not meet an adverse effect test

In addition to finding that most States we visited did not apply the required adverse effect test, we found significant differences between the nature and extent of services provided to speech-impaired children and the services provided to all other handicapped children.

For example, most children counted as speech impaired spend little time with their therapists compared with the time other handicapped children spend with their special education teachers. According to a January 1979 BEH report to the Congress, the average speech therapist in the Nation served 44 children--three times as many as teachers of all other handicapped children.

Also, officials in 28 of 30 LEAs we reviewed told us that most of their children receive an average of 1 to 1-1/2 years of speech therapy, usually in kindergarten and grades 1 to 3. Several of these officials stated that speech defects are usually corrected quickly. This is not generally true for children who have other handicapping disabilities.

Finally, most children classified as speech impaired spend significantly less time receiving special services outside the regular classroom than do other handicapped children and rarely, if ever, is the speech-impaired child's regular classroom program modified.

These factors, along with comments by LEA officials, raise questions on whether the speech impairments of most of these children adversely affected their educational performance and whether they would have met the eligibility requirement in program regulations if it had been applied.

94-142 program not designed for children receiving speech therapy only

Some LEAs were experiencing problems applying 94-142 requirements, especially the IEP requirement, to children classified as speech impaired.

Some LEA officials told us that the IEP process was not appropriate for children who receive only speech therapy. They complained, among other things, that the IEP process forces a school district to label children as handicapped who are really not handicapped, that preparing and processing the IEP often takes almost as much time and effort as remedying the child's speech defect, and that in the past, some LEAs stopped providing speech services altogether for several days or weeks to prepare and process IEPs.

Effect on childcounts by failing to apply an adverse effect test

As discussed previously, many of the children whom States and LEAs classified as speech impaired might not have met an adverse effect test and therefore might not have been eligible to be counted for 94-142 funding. We do not know exactly how many of these children have been counted. Officials at 10 of the LEAs told us that, if they applied an "adverse effect on educational performance" requirement, their count of speech-impaired children would be reduced substantially (by 33 to 75 percent.) Also, school districts in one State we visited--New Hampshire--were counting children as handicapped for Federal funding only when their progress in the regular classroom was significantly impeded by their impairment. State and local officials in New Hampshire stated that many children were receiving speech therapy for minor speech defects, mainly articulation problems, but they were not counted as handicapped for 94-142 funds.

Mr. Chairman, we are not questioning whether certain children need speech therapy. That is an educational decision. What we are questioning is whether the Congress intended that all children receiving speech therapy be served under the 94-142 program as handicapped children.

INDIVIDUALIZED EDUCATION PROGRAM REQUIREMENTS NOT MET

Public Law 94-142 requires LEAs to establish an IEP for each handicapped child. Each IEP is to contain information on the present levels of educational performance; annual goals, including short-term instructional objectives; specific educational services to be provided; the projected date for initiation and anticipated duration of such services; and appropriate criteria and evaluation procedures for determining whether instructional objectives are being achieved. The IEP is to be developed at a meeting attended by the child's parents, the child's teacher, and an LEA representative. In its implementing regulations, the Office of Education required that IEPs be in effect on October 1, 1977, and at the beginning of each school year thereafter, for every handicapped child, before "special education and related services" are provided.

Because of some confusing actions by the Office of Education during the writing of regulations, some LEAs were led to believe that an IEP need include only those special education and related services that were currently available in the LEA. Although BEH later notified the States that IEPs must include all services a child needs for an appropriate education, regardless of their current availability, many LEAs continued to limit the services listed in IEPs.

LEA officials in 15 of 28 LEAs where we discussed this issue, after the notification from BEH, claimed that their IEPs described all services needed by a child regardless of current availability. In most of these LEAs, however, we found IEPs that omitted needed services shown on the child's other records.

LEA officials in the other 13 LEAs candidly admitted that a child's IEP would not show needed special education or related services that the LEA does not or cannot provide. Some officials expressed the fear that an LEA that lists unavailable services in an IEP might be sued or forced to provide services it cannot afford or cannot provide for some other reason. Other officials stated that they do not want to hurt parent-school relations by telling parents, through an IEP, that their child needs a service which the LEA is unable to provide.

LEAs had considerable difficulty preparing IEPs that met 94-142 requirements. In mid-1978 we reviewed 456 IEPs prepared by 23 LEAs in six States. Overall, 78 percent of the IEPs did not meet the act's content requirements--65 percent lacked information on one or more elements and another 13 percent had vague or general statements.

Also, 52 percent of the 456 IEPs lacked evidence that all required participants attended the IEP meeting. The member of the IEP team missing most often was the LEA representative. Nonetheless, officials in 13 LEAs told us that they believed the IEP process has improved parent-school relations or has increased parents' understanding of their children's education.

LEAs had great difficulty meeting the October 1, 1977, deadline. Only 10 of the 30 LEAs came reasonably close to meeting the date. We examined 350 IEPs that should have been completed by October 1, 1977, and found that at least 46 percent were late.

Program regulations forbid counting handicapped children for 94-142 funding who do not have a completed IEP on the day of the count. However, most LEAs we visited improperly counted handicapped children who had no IEPs and those whose IEPs did not meet the act's requirements.

In addition to the newness of the IEP requirements, one reason that LEAs did not meet the requirements was the lack of guidance and instructions from BEH.

FREE APPROPRIATE PUBLIC EDUCATION NOT YET AVAILABLE TO ALL HANDICAPPED CHILDREN

The paramount goal of Public Law 94-142 was to make free appropriate public education available to every handicapped child.

However, officials in 16 of 21 LEAs where we discussed program goals, candidly admitted that they did not expect to be able to provide an appropriate education to their handicapped children age 3 to 18 for at least 3 to 6 years beyond the September 1, 1978, deadline.

Although some LEAs were unable to find needed special education personnel, inadequate funding was by far the most common reason cited by LEA officials for not providing an appropriate education to all their handicapped children. LEA officials were often relying on increased 94-142 funds to finance the cost of increased services needed to adequately serve all handicapped children. Few officials expected State and local funds to increase sufficiently to cover all costs in the near future.

LEAs in many States visited had encountered or were expecting to encounter problems raising local education funds. Passage of Proposition 13 in California, and similar measures as well as levy failures in other States, were expected to further hamper local funding for special education.

Most State special education funding was also not increasing rapidly enough to enable LEAs to fully serve all handicapped children in the near future. For example, California was moving to a new funding program, called Master Plan, that a State special education official said would not provide adequate funding of special education until at least the 1981-82 school year.

Further, the growth of Federal funds has not kept pace with amounts authorized in the act. For fiscal years 1979 and 1980, the President's combined budget requests for 94-142 were nearly $1.9 billion below the act's full funding authorization levels.

In congressional testimony, States, LEAs, and handicapped children's advocate groups have consistently pointed out their belief that reducing Federal funding so far below authorization levels means that the Federal Government is failing to live up to its commitment. In response, Federal education officials have pointed out that education is a fundamental State responsibility, that the increase in Federal support of special education over the past 5 years has been dramatic, and that the amounts requested are all that the Federal budget can support at this time.

STATE AND FEDERAL PROGRAM MANAGEMENT AND ENFORCEMENT PROBLEMS

Our review showed that many of the difficulties in adequately and promptly implementing the act's requirements occurred because of State and Federal management problems.

States need to improve their capability to carry out Public Law 94-142

At the time of our fieldwork, many SEAs had not adequately fulfilled their responsibilities for ensuring the proper implementation of Public Law 94-142. Technical assistance provided by

SEAs was often late and ineffective and SEAs had done little monitoring.

Officials in about half the locations we visited had problems obtaining technical assistance from their SEAs. In some instances, SEAs did not disseminate regulations, sent suggested procedures too late to be useful, or provided incorrect guidance.

Problems in monitoring LEAs also occurred and as a result, LEAs in several States did not benefit from the assistance and direction that earlier SEA monitoring visits could have provided them.

Many SEAs recognized the increased responsibilities placed on them by Public Law 94-142 and the need for additional special education staff to administer the program. Because the act did not provide additional Federal funds to hire more staff, many SEA special education officials tried to obtain State funding to supply the staff needed. However, few requests for additional State-funded positions had been approved at the time of our fieldwork.

Since each State participating in the 94-142 program must submit an annual program plan containing assurances that the State will carry out the provisions of the act, and since the Secretary of Education must evaluate and approve the State's plan before grant funds are released, a vehicle exists that would enable the Department to assess, at least in part, the adequacy and capability of the SEA to fulfill its responsibilities.

Initial Federal administration of the program was inadequate

In our opinion, some of the problems in implementing the 94-142 program might have been avoided or reduced had BEH adequately or promptly carried out its management responsibilities.

For example, the 94-142 legislation required that program regulations be published by January 1, 1977. Proposed regulations were published on December 30, 1976, only 2 days before the statutory deadline. However, States and LEAs were under no obligation to comply with these draft requirements. Final regulations were not published until August 23, 1977, only 39 days before October 1, 1977, the date that States and LEAs were to be in full compliance with most of the act's procedural requirements.

The act also requires the Department to provide States with technical assistance and training, to approve State program plans, and to monitor State and LEA program activities for compliance with the law and regulations. Our review, which included discussions with BEH, State, and LEA officials, indicated that BEH had problems performing these activities. thus contributing to the startup problems.

For example, BEH did not provide promised guidance and instructions, leaving SEAs and LEAs to design and develop their own procedures, manuals, and forms. Also, BEH took an average of 10 months to approve State plans for the 10 States we visited, although it had led States to believe that the process would be completed in 30 to 45 days. Finally, BEH did not make the required comprehensive evaluations of States' compliance with the free appropriate public education requirement of Public Law 94-142.

While we believe that BEH has improved in some of these areas, increased emphasis by BEH at the beginning of the program could have enabled SEAs and LEAs to implement the new law more effectively and with less confusion.

GAO PROPOSALS FOR IMPROVING 94-142

Our draft report on the implementation of the 94-142 program contained a number of proposals which, if properly implemented, should help to improve the program. Two were addressed to the Congress; the remainder were addressed to the Secretary of Education. The Department has provided written comments on all of our proposals.

Proposals to the Congress

Our draft report contains a proposal that the Congress clarify whether, and under what conditions, children who are receiving only speech therapy or other services currently cited in the law as "related services" are eligible for coverage under the 94-142 program. Our draft report states that in resolving this matter, the Congress should consider whether current departmental regulations, which provide that children are eligible only if their impairments adversely affect their educational performance, represent a reasonable interpretation of congressional intent.

The Department did not concur with our proposal and stated that it believed it is already clear that handicapped children who receive only speech therapy services are eligible for coverage under Public Law 94-142. The Department pointed out that the term "speech impaired" has been included in the definition of handicapped children since the inception of the State grant program in 1966, and that throughout the 14-year history of the program speech therapy has been recognized in the special education community as a basic "special education" service.

We agree that the term "speech impaired" is included in the law. Although it may be clear to the education community, as the Department asserts, in our opinion it is not clear in the law or its legislative history whether children receiving only minor amounts of speech therapy services are to be considered as handicapped and eligible for Federal funding under the 94-142 program. Based on (1) our review of the legislation and legislative history (2) the increased number of children being provided speech therapy services today compared with 14 years ago, and (3) the manner in which LEAs are classifying children as speech impaired, we believe the Congress should clarify whether, and under what conditions, children who are receiving only speech therapy or other related services are eligible for coverage under Public Law 94-142.

We are also proposing that the Congress consider the conflict between (1) the statutory purpose and timetable for providing each handicapped child with free appropriate public education and (2) the problems States and LEAs are having, and will probably continue to have, in meeting those objectives. Our draft report states that if considerable additional delays in reaching the goals are not acceptable, the Congress may wish to consider providing (1) incentives to stimulate increased State and local funding or (2) increased Federal funding for the program. On the other hand, if the Congress finds that existing goals and deadlines are too stringent, considering potential fund and staff availability, it may wish to consider modifying the act's timetables or scope of coverage.

Our draft report also proposes that, in the event the Congress examines the need for and availability of additional resources, it consider the related question of the eligibility of children who need only small amounts of speech therapy. Because of the large number of children and sizable amount of Federal funds involved, any decision to exempt portions of these children from coverage under the act, and to use Federal funds only for handicapped children whose impairments can be shown to adversely affect their educational performance, could significantly increase the chances of meeting Public Law 94-142's goals sooner--if funding levels are not reduced.

The Department stated that it believed that the Congress has undertaken, through oversight hearings, an extensive examination of both the statutory purpose and the problems encountered by the States and LEAs in meeting the purposes and timetables of the act.

We are aware that the 94-142 program has been the subject of extensive congressional hearings. However, the Congress has not yet acted to resolve a basic problem--the inability of the States to provide free appropriate public education to all handicapped children within the deadlines established in the act. We believe that additional perspective and direction should be provided by the Congress to all levels of the education community, particularly since both the 1978 and 1980 deadlines for compliance with the act have passed. Hence, we are providing the Congress additional information for its consideration in resolving the issues regarding program goals, deadlines for implementation, and funding.

Proposals to the Secretary of Education

Our draft report also includes a number of proposals to the Secretary of Education. These proposals are included as an attachment to this statement.

Regarding the controversy on the estimated number of handicapped children, the Department agreed with our proposals (1) to fully evaluate the effectiveness of LEA programs and processes for identifying, evaluating, and serving all handicapped children needing services, (2) to assist States and LEAs to eliminate deficiencies, and (3) to reconsider the validity of the 12-percent prevalence estimate. However, the Department did not agree that it should discontinue, at least temporarily, the use of the 12-percent rate as a basis for encouraging States to increase the number of children counted and served.

The Department stated that while it recognizes that the 12-percent estimate was not definitive, to date there is no compelling data that would justify revising the estimate. In fact, the Department believes there are "strong indications" that the 12-percent prevalence estimate is reasonable, pointing to 4 States having counts over 10 percent. Also, the Department stated that

SEAs and LEAs may not be doing all they can to identify handicapped children and it believes that the 12-percent figure is useful as a general guide in determining whether all handicapped children are served. Finally, the Department stated that it places equivalent emphasis on States' procedural safeguards to prevent misclassifications.

The main thrust of our draft report is not to resolve the controversy on the number of handicapped children needing services, or to show that BEH's 12-percent estimate is overstated. Rather, the report points out that BEH's efforts to get States to raise their child counts to the 12-percent level were not being tempered with enough caution to minimize the possibility of misclassifying children as handicapped. Even though the Department acknowledges that the 12-percent estimate is not definitive, our review showed that BEH was using the estimate in its management and enforcement as if it were.

The Department cited four States as a "strong indication" that the 12-percent estimate is reasonable. Our draft report points out, however, that 54 other States and jurisdictions had counts under 10 percent. Also, our report points out that even if the States have not identified all handicapped children, State and LEA officials believe that the number of unidentified children is far below BEH's estimate.

Finally, the Department stated that in its program oversight activities it reviews a State's procedures for preventing misidentification and cited one instance where a large number of children were removed from the childcount. In our opinion, this after-the-fact review at the State level is not sufficient to overcome the thrust of BEH's efforts, under its "new initiative," to get States to increase their count of handicapped children. We believe that a more effective approach would be for the Department to discontinue, at least temporarily, its reliance on the 12-percent estimate as the basis for encouraging States to serve more handicap children, and focus instead on updating the national prevalence rate and working to eliminate the barriers to full identification and service.

Regarding the need to resolve questions on eligibility criteria for children receiving only speech therapy, the Department agreed with our proposals to (1) define the terms "adverse effect" and "educational performance" as they relate to children's eligibility and (2) monitor and enforce the "adverse effect on educational performance" requirement. The Department also agreed with our proposals to improve the IEP process.

Regarding the need for improved State management of the program, the Department did not concur that States should be required to document in their annual program plans, and demonstrate to the Secretary's satisfaction, that they are able to meet the commitments in their plans and carry out their responsibilities under the law. The Department agreed, however, that Federal administraion of the program needed (1) strengthening through better evaluations of States' compliance with the free appropriate public education requirements of the act and (2) better, more timely, Federal administrative and management actions.

This concludes our statement, Mr. Chairman. We will be happy to answer any questions you may have.

- - - - -

U.S. GENERAL ACCOUNTING OFFICE PROPOSALS TO THE SECRETARY OF EDUCATION CONCERNING THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT OF 1975

CONTROVERSY ON ESTIMATED NUMBER OF HANDICAPPED CHILDREN

We propose that the Secretary:

--Stop using, at least temporarily, the 12-percent handicap prevalence estimate as the basis for encouraging States to increase the number of children counted and served.

--Fully evaluate, either directly or through the States' program monitoring efforts, the effectiveness of LEA programs and processes for accurately identifying, evaluating, and serving all handicapped children needing services under the act.

--Reconsider the validity of the 12-percent handicap prevalence estimate based on the evaluation results.

--Assist States and LEAs to eliminate deficiencies in their programs and processes for identifying, evaluating, and serving handicapped children.

QUESTIONS ON ELIGIBILITY CRITERIA NEED TO BE RESOLVED

Pending action on our proposal to the Congress, we propose that the Secretary either modify the regulations to define the terms "adverse effect" and "educational performance" and provide guidance to States and LEAs on applying the requirement or provide guidelines under which States must establish their own criteria for applying the requirement.

We also propose that the Secretary monitor and enforce the "adverse effect on educational performance" requirement in the Department of Education's program oversight activities, and notify SEA and LEA officials that handicapped children, including children who receive only speech therapy or other related services, are not eligible to be counted unless the adverse effect test has been demonstrated and documented.

INDIVIDUALIZED EDUCATION PROGRAM REQUIREMENTS NOT MET

Since IEPs must be prepared each year for all handicapped children, we propose that the Secretary increase the distribution to all States of instructions, guidance, and models relating to IEPs. The instructions should clearly provide that the States and LEAs cannot count handicapped children for 94-142 funding until LEAs have prepared IEPs according to all statutory and regulatory requirements.

We propose also that the Secretary:

--Revise the program regulations to state clearly that IEPs must include all special education and related services needed to provide a free appropriate public education.

--Require that Federal and State efforts to oversee the administration of Public Law 94-142 give special attention to enforcing IEP requirements.

STATES NEED TO IMPROVE THEIR CAPABILITY TO CARRY OUT PUBLIC LAW 94-142

We propose that the Secretary require States to document in their State program plans, and demonstrate to the Secretary's satisfaction, that they are able to meet the commitments in their plans and carry out their responsibilities under Public Law 94-142.

INITIAL FEDERAL ADMINISTRATION OF THE PROGRAM WAS INADEQUATE

We propose that the Secretary evaluate States' compliance with the free appropriate public education requirement of Public Law 94-142, and use the evaluations to determine what additional actions, including withholding funds as provided for in the act, need to be taken to assure that States are effectively implementing the act.

In addition, since the Federal Government's role in helping State and local grantees to revise or start new Federal programs can be of critical importance if the programs are to be implemented quickly and effectively and congressional mandates are to be met, we propose that the Secretary emphasize the importance of (1) timely issuance of regulations, (2) providing technical assistance, (3) reviewing State plans, and (4) making monitoring visits.

OCT 1 1980

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

September 30, 1980

HRO-232

10-1-80

The Honorable Jennings Randolph
Chairman, Subcommittee on Handicapped
Committee on Labor and Human Resources
United States Senate

Dear Mr. Chairman:

Your September 11, 1980, letter transmitted questions from the Subcommittee concerning our September 10 testimony on the implementation of Public Law 94-142. You also reiterated your invitation to us to comment on the testimony by the Assistant Secretary, Office of Special Education and Rehabilitative Services, Department of Education.

ANSWERS TO SUBCOMMITTEE'S QUESTIONS

Each of the Subcommittee's questions is quoted below and is followed by our answer.

Question

"You mentioned that sometimes teachers did not refer handicapped children for evaluation for a number of reasons, one of which was that the teachers did not want to do the paperwork that the referral process requires. In the course of your investigations, did the additional paperwork required by 94-142 appear to be a major concern of school personnel and was the additional paperwork a function of Federal regulations, State regulations or local practices?"

Answer

In the latter part of 1977 and early in 1978, when the act's procedural requirements were going into effect, paperwork was a major concern to school officials, particularly individualized education programs (IEPs). The reasons, we believe, were the newness of the program, the lateness of Federal regulations, and the lack of Federal and State guidance to help local agencies understand the program requirements. Most of the local agencies we visited had to design their own procedures and forms. The referral document itself was not a major problem, because most of the local agencies used a simple form for teachers to complete. The major concern was the perceived paperwork burden after referral.

As we continued to track the progress of implementation through 1978, the complaints of school personnel over the paperwork began to lessen, possibly because of greater familiarity with the paperwork process or because of greater concern over other issues.

Concerning the question of whether Federal, State, or local requirements were considered the major source of the paperwork problem, the answer in most of the locations we visited was clearly the Federal requirements. Most States did not have significant paperwork requirements related to identifying, evaluating, and serving handicapped children through IEPs before Public Law 94-142 went into effect. We found few instances where the State or local agencies added any paperwork requirements beyond those imposed by the Federal law and regulations.

Question

"You note that 59 percent of all SEA special education personnel were federally funded. Do you have any data on the percentage of Federal support of noninstructional special education personnel at the local level?"

Answer

Data available in seven States at the time of our fieldwork showed that an average of 59 percent of all SEA special education personnel were federally funded. In three States--Mississippi, New Hampshire, and Washington--Federal support was 80 percent or greater. However, we did not obtain data on the sources of funding for personnel at the local level.

Question

"You note in your report that you did not routinely talk with parents and children during your investigations. However, when you did discuss the law with parents and children, how would you assess their position on the law and on the implementation of the law?"

Answer

We did not visit parents at home or have prearranged meetings with them. However, on a few occasions we talked with parents who happened to be visiting local agency offices and schools when we were there. We also attended, as observers, several IEP meetings. Our overall impression from these contacts was that parents were pleased with and grateful for the special education assistance their children were receiving and with the attention that parents were getting. Few, if any, negative concerns were expressed by the parents with whom we talked. However, because the parents we contacted at the schools either were working at the schools as volunteers or were introduced to us by school personnel, their views may not be representative of all parents affected by the program.

Question

"According to your report, the greatest staff needs exist with reference to noninstructional staff (speech therapists, psychologists, etc.) rather than teaching staff. However, witnesses at previous hearings have indicated that there is a shortage of both special education teachers and regular education teachers trained to meet the needs of handicapped children. In your investigations, did LEA officials comment on the need for inservice training of existing personnel?"

Answer

In 1977 about 40 States and territories submitted data which indicated that their LEAs were expected to need an average of 30 percent more staff in fiscal year 1979 than they had in fiscal year 1977. This consisted of an estimated 56 percent increase in noninstructional staff and a 12 percent increase in teaching staff.

During our fieldwork, many local education agency officials commented to us on the need for both additional staff and training of existing personnel, especially regular classroom teachers. With more and more handicapped children being mainstreamed into regular classrooms for much of their education, local agencies were finding that many regular classroom teachers were not prepared to handle their responsibilities. This recognition was also coming from State and local education associations (teacher unions) and from the teachers themselves. Therefore, most school districts we visited had begun or were developing inservice training programs, particularly for non-special education staff.

COMMENTS ON THE ASSISTANT SECRETARY'S TESTIMONY

We offer the following comments on the Assistant Secretary's discussion (beginning on page 2 of his prepared statement) of the percentage of children being served as handicapped. The Assistant Secretary said that the growth year by year in special education enrollment, plus reports that there still are school children whose disabilities have not been appropriately identified, leads the agency to believe that its historic estimates of the prevalence of educationally disabling conditions are still reasonable.

As discussed in our testimony, controversy has been created because State counts of children being served have fallen substantially short of the original estimate that 12 percent of the Nation's school-age population is handicapped. State counts have averaged about 7.5 percent of the school-age population for the past several years and stood at 7.9 percent in December 1978. Computerized data obtained from the Office of Special Education and Rehabilitative Services dated July 21, 1980, showed that the most recent State counts of handicapped children (December 1979) averaged 8.25 percent of school-age population.

In his testimony, the Assistant Secretary presented data showing the percentage of handicapped children in school *enrollment*, as opposed to total *school-age population*. Therefore, the percentage cited by the Assistant Secretary--9.5 percent--was higher than the 8.25 percent computed by relating the number of handicapped children to total school-age population.

We are not aware of any previous instance in which the Office of Special Education and Rehabilitative Services used enrollment data as the base for calculating the percentage of handicapped children. In all past calculations that we are aware of, including the historic 12 percent estimate and data presented in the agency's annual report to the Congress in January 1979, school-age population was the base figure. Even in past calculations, the percentages were inflated because the childcounts, which included children in ages 3 to 21, were related to the school-age population (age 5 to 17).

In commenting on the draft report on our review, the Department of Education defended its use of the 12-percent estimate by pointing out that some States had counts of over 10 percent. The enrollment-based data in the table presented in the Assistant Secretary's testimony shows that 20 States and jurisdictions had counts of over 10 percent. However, relating the Assistant Secretary's figures on "children served" to school-age population instead of enrollment results in nine States with counts of over 10 percent (see enclosure).

One final note: If enrollment data are considered to be better than school-age population data for calculating the percentage of handicapped children, and if such percentages are to be related to the historic estimate, the historic estimate should be adjusted. The 12-percent estimate was based on school-age population. If it had been based on enrollment data, it would have been about 14 percent.

We appreciate the opportunity to comment on these matters and trust that the information is responsive to your needs.

Sincerely yours,

Gregory J. Ahart
Gregory J. Ahart
Director

Enclosure

COMPARISON OF PROPORTION OF CHILDREN SERVED AS HANDICAPPED BASED ON PERCENT OF ENROLLMENT VS. PERCENT OF SCHOOL-AGE POPULATION

State	Children served (note a)	Percent of enrollment (note a)	Percent of school-age population (note b)
Alabama	72,378	9.43	8.44
Alaska	10,242	11.56	9.85
Arizona	48,303	9.49	9.10
Arkansas	45,027	9.94	9.31
California	355,533	8.78	7.60
Colorado	47,228	8.58	8.11
Connecticut	62,551	10.90	9.35
Delaware	14,434	13.87	11.09
District of Columbia	5,217	4.91	3.85
Florida	136,963	9.10	8.24
Georgia	101,847	9.46	8.62
Hawaii	11,382	6.75	5.69
Idaho	18,066	8.91	c/8.91
Illinois	250,463	12.82	10.00
Indiana	98,818	9.12	8.03
Iowa	58,969	10.75	9.17
Kansas	38,733	9.16	7.89
Kentucky	67,087	9.91	8.55
Louisiana	85,640	10.59	8.84
Maine	24,307	10.67	9.82
Maryland	93,763	12.06	10.07
Massachusetts	141,869	13.53	11.42
Michigan	155,365	8.35	7.22
Minnesota	82,346	10.58	9.03
Mississippi	42,430	8.80	7.11
Missouri	98,134	11.24	9.42
Montana	12,781	7.91	7.15
Nebraska	30,386	10.58	8.86
Nevada	11,207	7.59	7.56
New Hampshire	12,627	7.38	6.40
New Jersey	149,578	11.61	9.32
New Mexico	20,479	7.43	6.88
New York	218,587	7.41	5.76
North Carolina	114,894	9.99	9.24
North Dakota	9,776	8.26	6.60
Ohio	201,352	9.94	8.33
Oklahoma	60,997	10.45	10.02

State	Children served (note a)	Percent of enrollment (note a)	Percent of school-age population (note b)
Oregon	44,145	9.45	8.64
Pennsylvania	190,244	9.66	7.68
Rhode Island	16,071	10.43	7.97
South Carolina	71,466	11.44	10.43
South Dakota	9,850	7.42	6.33
Tennessee	93,004	10.74	9.72
Texas	267,612	9.31	9.00
Utah	36,127	10.85	c/11.19
Vermont	12,424	12.45	11.14
Virginia	91,051	8.83	8.09
Washington	54,049	7.07	6.62
West Virginia	33,964	8.74	8.46
Wisconsin	65,611	7.65	6.17
Wyoming	9,873	10.34	c/10.48
Territory			
Puerto Rico	21,035	2.87	c/3.05
American Samoa	167	2.09	1.19
Guam	1,790	5.49	4.59
Northern Marianas	58	-	1.12
Trust Territories	1,742	-	4.37
Virgin Islands	1,318	5.20	5.15
Bureau of Indian Affairs	4,839	-	11.05
U.S. and territories	4,036,219	9.54	8.25

a/Source of data for these two columns--Table I of Office of Special Education and Rehabilitative Services' Testimony before the Subcommittee on Handicapped, Senate Committee on Labor and Human Resources, September 10, 1980.

b/Source of data for this column--Office of Special Education and Rehabilitative Services' Computer printout dated July 21, 1980, entitled "Report of Handicapped Children Receiving Special Education and Related Services as Reported by State Agencies Under P.L. 94-142 and P.L. 89-313, School Year 1979-1980."

c/We did not obtain and analyze the school-age population and enrollment data used as the bases for the percentages and do not know why enrollments in these four jurisdictions were equal to or greater than school-age population.

President
ANNE CAMPBELL
Nebraska Commissioner
of Education

President-Elect
ROBERT D. BENTON
Iowa Superintendent
of Public Instruction

Vice President
A. CRAIG PHILLIPS
North Carolina Superintendent
of Public Instruction

Directors
JOSEPH M. CRONIN
Illinois Superintendent
of Education

CALVIN M. FRAZIER
Colorado Commissioner
of Education

WILSON C. RILES
California Superintendent
of Public Instruction

THOMAS C. SCHMIDT
Rhode Island Commissioner
of Education

RALPH D. TURLINGTON
Florida Commissioner
of Education

CAROLYN WARNER
Arizona Superintendent
of Public Instruction

Executive Director
WILLIAM F. PIERCE

September 4, 1980

[illegible] 9-8-80
Sub[illegible]
[illegible] Handicapped

The Honorable Jennings Randolph, Chairman
Subcommittee on the Handicapped
United States Senate
Washington, D. C. 20510

Dear Senator Randolph:

In March 1980, Thomas C. Schmidt, then Rhode Island Commissioner of Education, testified before your subcommittee on behalf of the Council of Chief State School Officers regarding implementation of P. L. 94-142, the Education of All Handicapped Children Act. At that time, the Council's Board of Directors had authorized the appointment of a 15-state task force to discuss P. L. 94-142 administrative implementation issues and make recommendations. Those issues are: the state plan approval process; OSE (Office of Special Education)/OCR (Office of Civil Rights) relationship to state education agencies; consistency of standards and criteria to meet P. L. 94-142 requirements; and; supervision of interagency responsibilities.

Commissioner Schmidt agreed to inform the Subcommittee about the results of the task force activity. Enclosed is the final policy statement as approved by the Council's Board of Directors on August 22, 1980. We would appreciate your including this statement in the hearing record of September 10, 1980.

The Council looks forward to working with the Department of Education and with the Congress in the months ahead to resolve these questions so that handicapped youngsters can be served efficiently and effectively. If you have any further questions, please do not hesitate to contact us.

Sincerely,

John F. Martin

John F. Martin
Director
Federal-State Relations

JFM:jlh
Enclosure

COUNCIL OF CHIEF STATE SCHOOL OFFICERS
379 Hall of the States, 400 North Capitol Street, N.W., Washington, D.C. 20001 • 202/624-7702

Policy Statement

Implementing P.L. 94-142

State-Federal Administrative Questions

regarding

The Education for All Handicapped Children Act

Council of Chief State School Officers

Introduction

In November 1975, Public Law 94-142, the Education for All Handicapped Children Act became law. The basic guarantee of that law, that every handicapped child has a fundamental right to receive a free appropriate public education, was hailed throughout the nation as a milestone in the development of programs for handicapped Americans. At that time, state and local school administrators, board members, teachers, and parents joined together in the efforts to fulfill the promise of P. L. 94-142. That commitment to full service remains as strong today as it was in 1975.

Members of the Council of Chief State School Officers (CCSSO), the organization representing the superintendents and commissioners of education in the fifty states and six extra-state jurisdictions, remain united in their support for P. L. 94-142. Since passage of this law, state education officials have been in the forefront of efforts to eliminate educational discrimination against handicapped children and to provide those children with quality special education programs.

Chief state school officers are responsible for the administration of education programs serving the needs of all children and youth in their states. Special education is an integral part of our commitment to develop and improve public education programs for all children. State education officials agree that despite difficulties which have arisen during the first few years of implementation, P. L. 94-142 has led to an increased commitment of our schools to serving handicapped children.

The goal of this position statement is to seek clarity in the administration and implementation of P. L. 94-142 mandates in order to meet the needs of handicapped children more effectively. Accordingly, the recommendations are aimed at identifying desired policy outcomes. While several alternatives, including legislation, for achieving each of these outcomes is possible, the Council believes administrative solutions can be developed for most of the problems we have identified. We have identified those areas in which legislative change may need to be made.

This position statement, as well as the activities of members of the Council on special education issues, reflects a desire to create and continue a balanced partnership and dialogue between the federal government and the states in the interpretation and the procedures for implementing P. L. 94-142. If states and local education agencies are to do their job of insuring a free appropriate public education for all handicapped children, the federal government must be consistent in providing leadership and assistance across states.

The recommendations presented in this paper focus on four broad administrative issues affecting state-level implementation of P. L. 94-142. Differences in interpretation exist in: the state plan approval process; OSE (Office of Special Education)/OCR (Office of Civil Rights) relationship to state education agencies; consistency of standards and criteria to meet P. L. 94-142 requirements; and, supervision of interagency responsibilities.

Background

On February 8, 1980, representatives of several states with concerns about the implementation of P. L. 94-142, the Education of All Handicapped Children Act, and CCSSO staff met in Dallas, Texas. The purpose of the meeting was to determine whether common problems existed among states, and to develop a strategy for resolving any such problems. The four broad issue areas listed above emerged in the discussion as topics needing specific attention. As a result of the discussions in Dallas, the Council's Board of Directors asked President Anne Campbell, Nebraska Commissioner of Education, to appoint a task force which would develop a position paper and make specific recommendations for solving these P. L. 94-142 administrative problems.

Representatives from 15 states (Alabama, California, Connecticut, Florida, Illinois, Michigan, Nebraska, New York, Pennsylvania, Idaho, Minnesota, North Carolina, Oklahoma, Texas, and Colorado) met with Council staff and invited participants from the Education Commission of the States, the Bureau of Education for the Handicapped (now the Office of Special Education (OSE)) and the National Association of State Directors of Special Education in Chicago on April 28, 29 and 30. The task force, chaired by California, discussed specific problems within each of the four issue areas previously identified and developed recommendations in each area

I. PLAN APPROVAL PROCESS

The Program Plan each state is required to submit under P. L. 94-142 is central to the successful administration of the law. The approved plan includes the policies and procedures that each state will use in providing special education and related services to its handicapped children. States have experienced two major problems regarding the state plan: 1) an uncertainty as to the purpose of the plan, and 2) the need for an established and timely process for approval. The absence of clarity on these two points has hindered the effective and efficient delivery of services to handicapped children in the various states.

A. State Plan Not Local Compliance Document

The primary issue regarding the plan is the need to define more clearly its purpose. It is the Council's position that a state plan is a statement of commitment to provide education to all handicapped children as well as an assurance of compliance with the provisions of P. L. 94-142. It is a statement of processes and procedures to be used in accomplishing those goals. The state plan should not be viewed as a vehicle for substantiating current year compliance. Neither should a new plan be held by OSE pending resolution of local district complaints.

States are committed to resolve complaints in a timely manner, and to comply with P. L. 94-142. However, a separate and distinct process should exist to resolve local district complaints. Separate processes would avoid delays in plan approval for subsequent fiscal years because of a current year unresolved complaint.

Therefore, the Council advocates that approval of the program plan be limited to P. L. 94-142 state-level compliance. Local district complaints should be resolved through procedures outlined in the state plan as approved by OSE. Approval of future plans should not be subject to the resolution of pending investigations. Furthermore, OSE should demonstrate that a compliance issue is statewide before withholding any state's allocation.

B. Need for a Timely Plan Approval Process

The second major issue identified regarding the state plan is the need for a clearly established and timely process for approval. States have experienced a variety of problems with the plan approval process. The reasons for problems and delays include:

1) the need for a clear process and procedures for approval of state plans;

2) the need for criteria for approval; these criteria should not be changed or revised during the approval process;

3) the need for consistency in technical assistance from state plan officers and other OSE staff both within a state and among states; and,

4) the need for a specified period within which OSE must either approve or disapprove a state plan.

Members of the Council agree that problems existing between federal and state levels parallel the problems existing between the state and local levels. States recognize and expect differences in the plans submitted by their local education agencies. Similarly, OSE should expect differences from state to state. In the plan approval process there is a need for flexibility in the product, but there must be consistency in the process. The plan, which assures the delivery of services to handicapped children, must be negotiated and approved in an orderly, public and timely manner if states are to guarantee these services.

C. Recommendations

Therefore, the Council recommends that:

- OSE establish and disseminate a plan approval process which clearly identifies the various stages of approval and what role, if any, various groups and other agencies have in that process:

1. Prior to formal submission of a state plan, the state and OSE should continue to carry out the technical assistance/negotiation process as long as necessary;

2. OSE should formally notify each state that its plan has been received. The formal submission date for a state plan is indicated by a letter of intent from the state to OSE accompanying the plan.

3. Within 60 calendar days of formal submission of a state plan, the Secretary must either approve or disapprove the plan. If the Secretary does not act within 60 days, the plan will be assumed to be approved. A state should be notified of an intent to disapprove its plan within a reasonable time period prior to the end of the 60 day period.

4. Should an SEA submit major changes in its plan prior to approval and within the 60 days, then either the state or OSE may begin another 60 day period.

5. At the end of the 60 days, if both the SEA and OSE agree, a 30 day extension may be added to the 60 day period.

6. If a state appeals disapproval by the Secretary of its plan, the Secretary must review the appeal and make her decision within 30 days.

- Approval of future plans should not be subject to the resolution of pending complaint investigations.

- The plan approval process established by OSE should apply to amendments to the 1980 Three Year Plan.

- OSE should address the need for consistency of information and technical assistance received from state plan officers and other OSE staff members.

II. OSE/OCR RELATIONSHIP TO STATE EDUCATION AGENCIES

The issue of the OSE/OCR (Office of Civil Rights) relationship to state agencies arises from overlapping responsibilities among the various federal agencies in complaint investigation and resolution, policy and procedure setting, and enforcement of P. L. 94-142 and Section 504 of the Vocational Rehabilitation Act. Duplication of effort between OCR and OSE has resulted in confusion for children and parents, and excessive amounts of time being taken to resolve complaints; such situations may seriously impair a child's educational program. Chief state school officers are committed to the speedy and fair resolution of complaints. The Council believes that there should be a single process which affords a complaint resolution in a timely manner and which clearly delineates the roles, responsibilities and procedures of both federal and state agencies as they monitor and enforce the requirements of P. L. 94-142 and Section 504. This issue can be divided into three major problem areas: 1) OSE/OCR inconsistencies with respect to a single issue; 2) Section 504/P. L. 94-142 inconsistencies; and 3) complaint investigation inefficiencies.

A. OCR/OSE Inconsistencies

First, several states have received inconsistent interpretations of the P. L. 94-142 and Section 504 mandates from OSE and OCR, especially with respect to questions concerning the provision of related services. OSE and OCR conflict in their definition of related vs. medical services as required under P. L. 94-142 or Section 504, as well as the responsibility of the local education agency (LEA) to provide those services.

B. P. L. 94-142 Plans Meet Section 504 Requirements

Second, although the regulations implementing Section 504 indicate that meeting the requirements of P. L. 94-142 is one way to comply with the education portion of the Section 504 mandate, several states have been required by OCR to alter procedures or services which have been previously approved by OSE in the state's P. L. 94-142 plan. Policy interpretations which are developed by OSE should be accepted by OCR, as stated in Section 504 regulations. States and local education agencies only can develop and implement programs of special education services when the responsible federal agencies agree on the acceptability of these programs. OCR should adhere to its guidelines by acknowledging in practice that compliance with the provisions of P. L. 94-142 is adequate to meet the more general Section 504 mandate.

C. Complaint Investigation and Resolution

A third problem area, complaint investigation and resolution, falls into two categories: 1) simultaneous investigation of a complaint by one or more federal agencies and/or the SEA, and 2) the interruption of a state's complaint resolution process and, more seriously, the reversal by OCR of a state fair hearing decision regarding a complaint which has been investigated by the state using its approved process and procedures.

Simultaneous investigations may occur as the result of a complaint filed under Section 504 with OCR, and with the state education agency under P. L. 94-142. The Council recognizes that by law OCR's jurisdiction does not rest upon prior exhaustion of state remedies; it is a complaint system to which a parent of a child can turn without regard to state procedures. However, we believe that state remedies should be exhausted first to avoid confusion and duplication of effort. In the event that simultaneous investigations are carried out, OCR should notify the SEA of its activities and provide specific information to the SEA regarding the complaint. For example, in several states OCR has gone directly to the LEA in a complaint investigation without notifying the state that an investigation has been initiated.

Similarly, federal agencies may duplicate one another's investigations, as when both OSE and OCR investigate the same complaint. In one state, OSE and OCR are both investigating the move of one of the residential schools from one site to another. That state, as a result, has had to provide excessive hours of staff time and two separate sets of documentation to the federal agencies, with no assurance that each agency will reach the same conclusion. This duplication of effort has caused uncertainty in the placement of the children and has proved burdensome for both parents and local education agencies.

A second category of complaint confusion which has created problems for states involves the interruption of a state's complaint resolution process and/or the reversal of fair hearing decisions by a federal agency. Some states report that OCR regional offices have overruled state decisions without conducting hearings of their own or reviewing appropriate documents. States are responsible, under the approved plan, for the investigation and resolution of complaints filed under P. L. 94-142. Under the law, approved state plans provide for procedures, including local hearings and other mechanisms, for complaint resolution. Procedures are also provided for unresolved complaints to be appealed first to the state superintendent or commissioner, and eventually to the courts. If OCR or OSE interrupts or reverses any part of this process, problems inevitably arise. The Council believes that the occurance of a series of administrative remedies as a result of the reversal of a state fair hearing decision at the local, state and federal levels is counterproductive and delays implementation of an appropriate program for the child. For example, P. L. 94-142 provides that if a parent or parent surrogate appeals to the courts on an unresolved state-level decision, the child remains in the current placement. However, if the parent or surrogate files a complaint with OCR and does not also appeal to the court, there is a question regarding the child's appropriate placement. The role of federal agencies should be to ensure that local and state education agencies are affording individuals the rights to which they are entitled and that the procedures outlined in the state plan are being carried out.

The Council is encouraged by the success of the pilot projects conducted in at least two states to address this problem. One person in the Education Department regional office negotiates with OCR on all complaints. Other states have met directly with OCR and have negotiated a process which channels all OCR complaints through the SEA. These two procedures are working well and the states involved have experienced few problems with duplication of the investigation process. However, there should be a consistent process for all states.

D. Recommendations

The problems described in this section are natural outgrowths of the complicated relationship between OCR and OSE and their responsibilities to monitor the implementation of their respective mandates. Section 504 and P. L. 94-142 are aimed at ensuring the rights of the same population. While the Council encourages OCR and OSE to cooperate and coordinate their activities to avoid duplication of effort, our members believe that a clearer delineation of the roles and authority of these two agencies must be achieved. The Council proposes a series of recommendations, which taken as a whole, will address the issue of agency responsibility and alleviate the problems associated with this issue.

Therefore, the Council recommends that:

- Responsibilities and boundaries be clearly defined for OSE and OCR as they relate to the enforcement of P. L. 94-142 and Section 504 in the following areas:
    - -- complaint investigation and resolution
    - -- policy and procedure setting
    - -- compliance monitoring activities

- Responsibility for investigating complaints as they relate to P. L. 94-142 be assigned to a single agency in order to eliminate duplication in the investigation process. The Council suggests that OSE be responsible for the development of policies and procedures for P. L. 94-142, and that OCR be limited to the investigation of individual complaints.

- The standards against which a complaint is investigated be the state plan as approved by OSE.

- OCR should not be able to overturn a P. L. 94-142 state fair hearing decision; doing so would provide a second administrative remedy for the same complaint, when the courts should be the forum for resolution. Further, OCR should not be able to interrupt state complaint resolution processes.

- OCR establish a systematic process for complaint investigation and disseminate that process to the states. The process should include official notification to states upon the initiation of a complaint investigation by OCR, and procedures for ensuring non-duplication of investigation.

- If OSE finds a state to be in compliance with the law, either by virtue of an approved state policy or procedure in the state plan or through formal complaint investigation, OCR should not be able to overturn that decision.

- There be established in OSE and OCR, or in the Undersecretary's office, one cross-cutting unit held accountable for coordinated efforts.

III. CONSISTENCY OF STANDARDS AND CRITERIA TO MEET P. L. 94-142 REQUIREMENTS

A. Need for Consistent Policy Interpretations

The development of consistent policy relating to P. L. 94-142 can eliminate much of the confusion which now exists concerning state and local responsibilities. States have experienced conflicting policy interpretations from OSE regarding standards and criteria for implementing specific requirements of P. L. 94-142, including related services, due process procedures, and other issues. The inconsistencies have surfaced via the plan approval process and program administrative review (PAR) visits. States have reported that policies and procedures which have been approved by OSE in one year's state plan are questioned in the next year's plan. In addition, the issues raised by OSE regarding policies and procedures in the state plan are frequently different from the issues examined during the PAR visit. Finally, it has been noted that the lack of a standard policy interpretation procedure has, in some instances, given the appearance of less than a fair, open and timely process. The issue of timeliness is especially important; policy decisions must reach final resolution within a reasonable period of time.

B. Need to Respect Individual Character of States

In endeavoring to establish a policy process, the federal government must recognize that there are differences among states, and that the specific ways in which states implement P. L. 94-142 will vary. States and federal officials agree on the goal of providing a free appropriate public education of every handicapped child. Broad policy questions about implementing P. L. 94-142 should be addressed at the Federal level; the means and the methods states use to implement these policies should be determined by each state and must be allowed to be different. Education is a state responsibility and each state has established an educational system which responds to its unique needs. Differences in policies and procedures for implementing P. L. 94-142 are to be expected. Therefore, when policy interpretations are made by OSE regarding state policies and procedures, the diversity among states must be respected. In addition, the federal government cannot make policy decisions without considering and understanding the responsibilities of local education agencies. While responsibility for education rests with the state, the principal functional responsibility for the quality and content of education, in most states, has been delegated to local school boards. Just as states must respect local control and maintain state intervention at the minimum, so must the federal government be careful not to encroach on both state and local responsibilities in its implementation of P. L. 94-142. This is particularly critical in policy interpretation.

C. Types of Policy Questions

The Council is suggesting that the initial step for OSE when responding to a request for policy interpretation should be to determine the scope and nature of the specific issue. At least four types of policy issues can be recognized; the characteristics of these types follow:

1. Policy Questions of National Scope

National policy interpretations are those which relate to policies which have a similar and extensive impact upon all states; for example, most policies concerning child identification requirements. The recognizable characteristics of such national policy questions include:

--that they are broad, universal, necessary for all states;

--that the policy and the way it is applied must be the same across states.

2. Interpretations Which Apply to Specific State Situations

Situation specific policy interpretations differ from national interpretations in that they are framed in response to the particular circumstances of a state or one of its educational units. For example, the funding system in one state may be fundamentally different from the funding system in another; therefore, a response to a policy question regarding what is allowed under P. L. 94-142 might be different for each state because the funding system is different. Further, the standards set in each state's plan as approved by OSE may differ. Since each state is evaluated against the standards established in the state plan, each policy decision based on this plan will be state-specific and not of national impact. The requirements of particular state plans, legal frameworks of individual states, and other factors must all be taken into account. Such policy interpretations would apply only to a specific context.

Certain interpretations might be written to be effective for designated time periods. For example, a state might propose a three-year, good faith solution to a problem requiring extensive staff training in that state.

The critical distinction between a national policy interpretation and a situation specific policy is that the latter does not set a national precedent.

3. Policy Questions Which Must be Decided by State

Some policy questions, even if they have reached OSE through complaints, the media, or other means should be decided by the state. An example of a policy interpretation that should be left to the states to formulate would be the certification requirements for special education personnel. The characteristics by which such questions may be recognized include:

--statute and regulations charge the state with implementing the issue in question

--situation is unique to one state and interpretation by OSE would interfere with state responsibility

4. Policy Questions Which Cannot Readily be Resolved

Finally, there are policy issues or questions which OSE cannot address. This may be the case when the intent of a specific statute or regulation is ambiguous, or when the law or regulations are silent. In such cases, amendment of the statute may be recommended by OSE because there is no basis for a policy decision. This situation also arises when the law prohibits an interpretation which is desired by special education experts. For example, OSE and the states may agree that the "diagnostic-placement process" is a good educational practice, but the law explicitly prohibits such a process. The recognizable characteristics of these include:

- --statute or regulations are ambiguous and therefore, prevent policy interpretations
- --a specific interpretation is desired but cannot be made because regulations or law prohibit such interpretation.

D. Recommendations

Presently, OSE needs a mechanism for policy decision-making. Also needed is a system to define policy questions in terms of scope and nature. The overall procedure needs to be timely and include administrative due process steps such as informal negotiation, public debate, and impartial appeal. The Council suggests that the first step in the process be notification to all states that a policy interpretation is being considered on a specific issue. Then, OSE should decide into which of the four categories the policy decision belongs. States should be invited to participate fully in the policy interpretation process. Prompt distribution of responses to all states should be ensured. This ongoing dissemination could be in the form of updates to a standard policy manual.

The Council recommends that:

- OSE develop a process and procedures to be used for policy resolution, using the four types of situations into which issues needing interpretation must fall. The process should include a standard time line for state implementation of such policies, and administrative due process.

- A plan for policy resolution and dissemination should be in place 18 months prior to the due date of the 1983 plan.

IV. SUPERVISION OF INTERAGENCY RESPONSIBILITIES

A. SEA Supervisory Responsibilities Are Difficult to Implement

Section 612 (6) of P. L. 94-142 states:

> "The State education agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State education agency and shall meet education standards of the State educational agency."

The provision requires that programs serving handicapped children administered by other state agencies be under the supervision of the SEA, meet state educational standards, and be monitored by the SEA to insure compliance with P. L. 94-142. In addition, state agencies providing related services as specified in the IEP are to be supervised by the SEA.

The Council supports the intent of this provision, which is to ensure that the rights of handicapped children are protected by assigning the responsibility of overseeing the delivery of special education and related services as specified in the childs' individual program to one state agency. Discharging this responsibility has been difficult for SEAs because, for the most part, they have no authority in state or federal law to carry out the mandate or to meet the intent.

The vehicle which is most widely used for complying with these provisions is an interagency agreement. It is jointly developed between respective state agencies concerning state education agency standards and delineates responsibilities for each of the agencies in the delivery of services to handicapped children. The goal of interagency agreements is to provide a coordinated system of services to handicapped children among all service providers.

The major reasons for difficulty in implementing these provisions are the fragmentation of state and federal laws, inconsistent interpretation of existing law and regulations, unclear definition of single agency responsibility and the lack of incentives and shared commitment. These constraints severely affect the coordination of existing services for handicapped children and the degree of SEA control over the delivery of appropriate education and related services provided by public agencies within a state.

B. State and Federal Laws are Fragmented

The problem or conflict of fragmented state and federal legislation exists on two levels. First, some states have a statutory or constitutional prohibition against development of interagency agreements. The second level, however, concerns inconsistencies in the federal statutes governing the delivery of services to handicapped children. For example, under Medicaid, parents are required to pay a proportionate amount for services based on their income, while P. L. 94-142 mandates that a free and appropriate public education be provided at no charge to the parent. In addition, services for children are being included in the IEP which normally are the responsibility of other state agencies, as provided in the various human services laws. When these services are included in the IEP however, they ultimately become the responsibility of the SEA under P. L. 94-142. The issue is whose dollar is spent first and which agency is responsible for providing the services. Other federal laws and regulations affecting the delivery of services to handicapped children by other state agencies must be examined to determine if those laws, regulations, and policies are consistent with P. L. 94-142. If P. L. 94-142 is to be implemented effectively and the SEA is to coordinate services for handicapped children, then federal laws and regulations governing the delivery of those services cannot conflict with one another.

C. Existing Laws and Regulations are Interpreted Inconsistently

The problem of inconsistent interpretations of existing laws and regulations is related to the problem of conflicting federal statutes. The major interpretation issue, again, is in the area of related services and whether or not an SEA should, or can be responsible for the delivery of those services. For instance, the difference between medical services and educational services is not clear. The question is, are the services necessary for a child to benefit from special education? For example, one state has reported that a child having a cleft palate was unable to take advantage of speech therapy as included in his IEP until corrective surgery was performed. A OSE official informed the SEA that P. L. 94-142 funds must pay for that surgery because it was necessary for the child to benefit from special education. Chief state school officers agree that services must be provided and that the SEA should coordinate educational services for handicapped children. Experience dictates however, that SEAs cannot deliver services for which other agencies are normally responsible. The Council believes that the delivery of services to handicapped children is a state responsibility, and not the sole responsibility of the SEA. Therefore, responsibility must be assigned to agencies which have the knowledge and expertise in providing those services. Federal legislation governing other human service agencies must be expanded beyond the requirements, such as income eligibility, which limit the scope of services.

D. Other State Agencies Lack Incentives to Cooperate

Other limitations experienced by SEAs include the lack of incentives for other state agencies to enter into and honor interagency agreements. Federal dollars to those agencies continue to flow regardless of their commitment to an interagency agreement of their compliance with P. L. 94-142. Without incentives and no mandate for responsibility, there is no shared commitment by other agencies toward a coordinated system of services for handicapped children.

E. Recommendations

The delineation of interagency responsibilities is perhaps the most complex of the four areas addressed. State education agencies need continued and stronger support from the federal government in establishing and defining responsibilities among agencies providing services to handicapped children. Such support will assist SEAs in their efforts to carry out the mandates of P. L. 94-142.

Therefore, the Council recommends that:

- The Secretaries of Education and Health and Human Services sort out the responsibilities of the various Federal agencies and provide a mechanism which holds those agencies accountable for the provision and maintenance of those services for which they have normally been responsible. Federal interagency agreements among all agencies funding state level programs serving handicapped children should be developed, publicized and made clear to all states. This federal interagency agreement should be initiated and monitored by the Assistant Secretary for Special Education and Rehabilitative Services. These agreements would state that all federal funds earmarked for the education of handicapped children and related services not be released to any state agency until the SEA assures that either:

1) it has the statutory authority to supervise these programs, or,

2) a state level interagency agreement exists authorizing the SEA to supervise these programs.

For instance, if this recommendation were adopted, handicapped children in institutions under the jurisdiction of a state agency other than the SEA would recieve educational services which had been supervised and approved by the SEA. Federal funds would not be released to the institution unless the SEA were given the authority to monitor the delivery of these services.

- OSE, in cooperation with states, develop and promote model interagency agreements.

- The Secretaries of Education and Health and Human Services require the Governor's office to monitor the provision of human services as provided by other state agencies. The SEA will continue to identify and coordinate all related services; however, the monitoring of other agencies by the SEA creates dysfunctional conflicts among state agencies.

- The Secretaries of Education and Health and Human Services examine other human services legislation such as Titles IX and XX of the Social Security Act, Section 504 the Vocational Rehabilitation Act, and the medicaid legislation to determine whether those laws, regulations and policies are consistent with P. L. 94-142, and ensure that they are made to be consistent. In addition, legislation may need to be developed which would define more clearly habilitation, treatment, maintenance, etc., and which would assign specific related services, such as physical and occupational therapy, residential treatment, and mental health, to specific agencies.

V. CONCLUSION

The Council of Chief State School Officers has attempted to identify some of the P. L. 94-142 administrative problems which are common to most states. We have discovered that many of the concerns are the result of confusion or misunderstanding about the role and responsibilities of federal, state and local governments in the national effort to guarantee equal educational opportunity to handicapped children. Much of this confusion can be eliminated by the development of clear and consistent procedures for administering P. L. 94-142 at the federal level.

In each of the four broad issue areas addressed -- state plan approval process, OSE/OCR relationship to SEAs, consistency of standards and criteria to meet P. L. 94-142 requirements, and supervision of interagency responsibilities -- the Council has concentrated on recommending a uniform process to resolve problems across all states. A uniform and consistent process for administering P. L. 94-142 will ensure that differences in policy interpertations or product among states are the result of flexibility and accommodation rather than substantive alteration of goals.

We believe, however, that these problems must be resolved through whatever means necessary: administrative procedures, regulation, policy statement or legislative changes in both P. L. 94-142 and other human services and education legislation. Our enthusiasm and support for the goals of P. L. 94-142 remains strong. We have made excellent progress over the past five years in increasing the availability and improving the quality of special education services. We recognize, however, that, because the system is imperfect, much work remains to be done. Therefore, chief state school officers are eager to cooperate with the Secretary of Education in developing solutions to these P. L. 94-142 implementation problems. We are confident that the expectations of handicapped youngsters and their parents can be realized if we work together to develop efficient and effective administrative procedures at the federal level for this program.

Lt. Joseph P. Kennedy Institute Washington, D.C. 20017
801 Buchanan Street, n.e. (202) 529 3515

SEP 25 1980

September 5, 1980

8-25-80

The Honorable Jennings Randolph
Chairman Subcommittee on the Handicapped
108 Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Randolph:

Oversight Hearings: P.L. 94-142

I would like to take this opportunity to share with you some of the Institute's philosophical and pragmatic concerns regarding the implementation of P.L. 94-142. The Kennedy Institute has been serving children and adults with developmental disabilities for over 20 years. Our concerns reflect ongoing problems experienced by staff, parents, and students in the tri-state area we serve.

First, the interpretation of the term "least restrictive environment" continues to present difficulties in all aspects of program development and student placement. The least restrictive environment is consistently defined as the regular classroom, a facility-oriented, rather than student-centered, definition, which seems to grow out of fiscal, rather than service, concerns.

We feel strongly that the least restrictive environment should be defined as that setting which best supports the total educational needs of the individual. The evaluation criteria should be, first, the instructional needs of the student, and, second, the environmental tolerance of the child. Always, the goal is education in the maximally normative setting which best enhances the potential of the child with handicapping conditions.

Secondly, comprehensive development of state plans at least in the District of Columbia, does not include sufficient participation from the private sector. The state advisory council is under-utilized and other forums for exchange are basically nonexistent. As a result, there is sporadic program development instead of a well-planned continuum of services. Moreover, the relationship between the State Education Agency and Local Education Agency, and the private providers, is strained by the lack of cooperative service planning.

Thirdly, although program monitoring processes have improved considerably, the ability of the evaluations to effect change in service delivery differs greatly between the public and private sectors. The private schools' dependency on tuition grant funding motivates them to maintain quality levels of instruction and to correct deficiencies. Unfortunately, there doesn't seem to be a similarly effective device to insure the compliance of public school local and state programs. While parent groups continue to be the primary force behind programmatic and policy improvement in the public sector, their effectiveness varies according to the political and economic receptivity of the school boards. Financially strapped school systems continually explain inadequate and inappropriate programs as the result of fiscal constraints-even in the face of repeated litigative efforts.

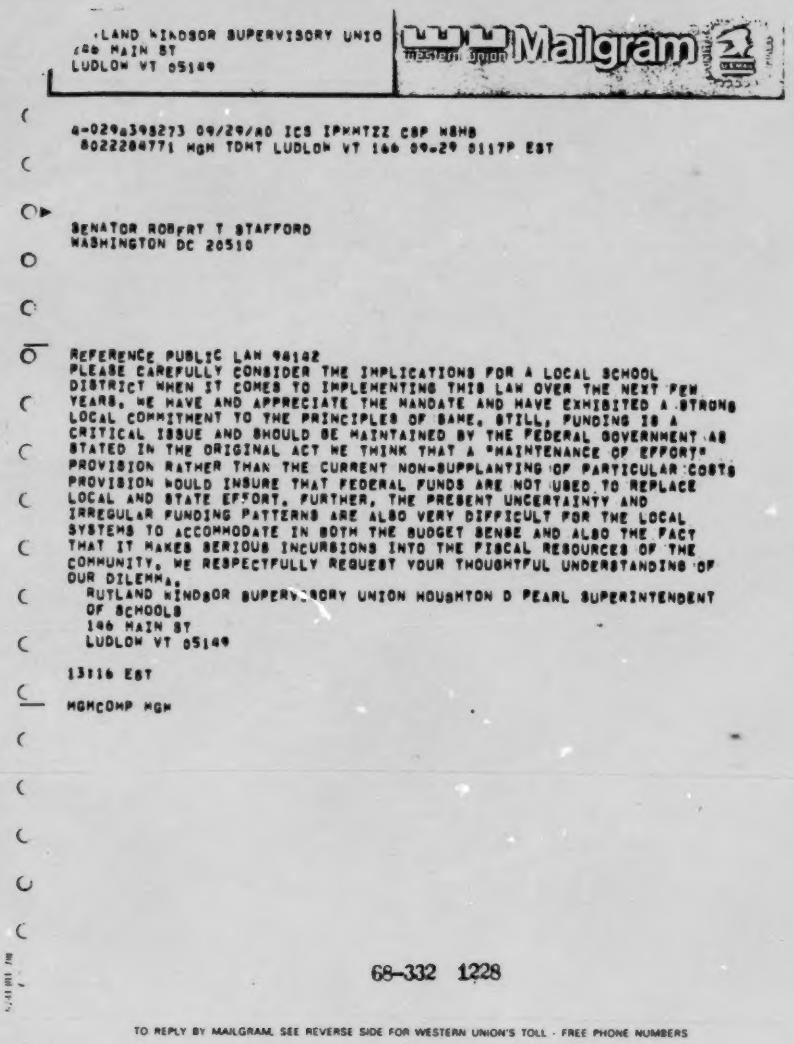
Although our overriding concern is for the quality of services available to the child with handicapping conditions, a contingent concern is for the future of the many successful private programs in the community. It is imperative that the states and local education agencies develop free and appropriate options for children with special needs; but it is likewise important that the service continuum developed reflect the varied environmental and instructional needs of the students. The private program can often be the most economical and least restrictive setting for a child, and should therefore be an integral part of the planning process and the service delivery system.

Thank you for the opportunity to share these thoughts with you and your Committee.

Sincerely,

Michela Perrone

Michela Perrone, Ph.D.
Executive Director



·LAND WINDSOR SUPERVISORY UNIO
146 MAIN ST
LUDLOW VT 05149

Western Union Mailgram

4-0294398273 09/29/80 ICS IPMMTZZ CSP WSHB
8022284771 MGM TDMT LUDLOW VT 166 09-29 0117P EST

SENATOR ROBERT T STAFFORD
WASHINGTON DC 20510

REFERENCE PUBLIC LAW 94142
PLEASE CAREFULLY CONSIDER THE IMPLICATIONS FOR A LOCAL SCHOOL DISTRICT WHEN IT COMES TO IMPLEMENTING THIS LAW OVER THE NEXT FEW YEARS. WE HAVE AND APPRECIATE THE MANDATE AND HAVE EXHIBITED A STRONG LOCAL COMMITMENT TO THE PRINCIPLES OF SAME. STILL, FUNDING IS A CRITICAL ISSUE AND SHOULD BE MAINTAINED BY THE FEDERAL GOVERNMENT AS STATED IN THE ORIGINAL ACT WE THINK THAT A "MAINTENANCE OF EFFORT" PROVISION RATHER THAN THE CURRENT NON-SUPPLANTING OF PARTICULAR COSTS PROVISION WOULD INSURE THAT FEDERAL FUNDS ARE NOT USED TO REPLACE LOCAL AND STATE EFFORT. FURTHER, THE PRESENT UNCERTAINTY AND IRREGULAR FUNDING PATTERNS ARE ALSO VERY DIFFICULT FOR THE LOCAL SYSTEMS TO ACCOMMODATE IN BOTH THE BUDGET SENSE AND ALSO THE FACT THAT IT MAKES SERIOUS INCURSIONS INTO THE FISCAL RESOURCES OF THE COMMUNITY. WE RESPECTFULLY REQUEST YOUR THOUGHTFUL UNDERSTANDING OF OUR DILEMMA.

RUTLAND WINDSOR SUPERVISORY UNION HOUGHTON D PEARL SUPERINTENDENT OF SCHOOLS
146 MAIN ST
LUDLOW VT 05149

13:16 EST

MGMCOMP MGM

TO REPLY BY MAILGRAM, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

WINDHAM CENTRAL SUPERVISORY UNION
BROOKLINE • DOVER • JAMAICA • MARLBORO • LELAND & GRAY U.H.S. #34
NEWFANE • STRATTON • TOWNSHEND • WARDSBORO • WINDHAM • WINHALL
P. O. Box 186
NEWFANE, VERMONT 05345
Phone: 802-365-7651

SUPERINTENDENT
THOMAS E. LEWIS

ASS'T SUPERINTENDENT
CHARLES P. MEMOE

25 September 1980

Senator Robert Stafford
Dirkson Senate Office Building
Room 5219
Washington, D. C. 20510

Dear Senator Stafford:

I am writing in regards to P.L. 94-142 and its ramifications on the small rural towns which comprise the Windham Central Supervisory Union in Southeast Vermont.

There is no question that P.L. 94-142 was a very needed piece of legislation and certainly a milestone in public education. All of my School Board Members (total 42) are very supportive of the cause/effects of the legislation and I feel have done an outstanding job in supporting the ideals and intentions included in D.L. 94-142.

There is concern on my part and also various local School Board Members that State and Federal financial assistance will not continue so that local school districts can meet the mandates of the law. The financial burden could be so great that the intent of P.L. 94-142 could be lost within the financial problems.

It seems that local districts will be expected to carry more and more of the costs which could become a lion's part of their school budget. Because of the rural nature of this area, transportation of special needs students attending special classes has become extremely expensive and one that the local district must shoulder (all or part).

The purpose of this letter is to express a concern that the Congress appropriate sufficient funds through the State Departments of Education to help the small school districts meet all the demands and expectations.

Sincerely,

Thomas E. Lewis
Superintendent

MONTPELIER PUBLIC SCHOOL SYSTEM
58 East State Street
Montpelier, Vermont 05602

Office of
Superintendent of Schools

September 24, 1980

Senator Robert T. Stafford
Dirksen Senate Office Building
Room 5219
Washington, D.C. 20510

Re: P.L. 94-142

Dear Senator Stafford:

May I first commend you on your diligent work in recent years on behalf of all Handicapped Children. The statutes, plus the related regulations, have certainly caused a greater realization on the part of the public in general that equality of opportunity never really existed in our public educational system.

Now that we are well on our way to making some real progress, I would like to point out two areas that as a field practitioner I feel should be addressed:

#1. The issue of "Non-supplanting" of funds should be looked at very carefully. In our experience with Title I programs we have found the "Maintenance of Effort" requirement much more realistic in practice. For instance, when funding adjustments are made at the State level a given local program aimed at assisting the handicapped is subject to revision or reduction under the "non-supplanting" regulation, as flow through funds cannot be used in place of these lost funds due to possible past funding practices on the local level.

On the other hand, if "Maintenance of Effort" regulations are utilized to keep a funding base under these programs more flexibility is given the local school district in terms of meeting the financial requirements no matter what adjustments are made along the line. Also, and probably more important, we are beginning to hear legislative noises regarding the fact that if Federal 94-142 funds are increased State support can be reduced by a like amount. Why not place a State "Maintenance of Effort" regulation in the law to prevent state legislators from even contemplating the possibility of reducing State support below a previous year's level?

This, plus the same yearly effort requirement on the local level would certainly go a long way in attempting to stabilize the funding packages.

And #2. Federal Funding. I have been a party to a couple of State level meetings of late dealing with P.L. 94-142 implementation along with Sec. 504. The same story grinds on - the Feds make the rules, then under-fund the implementation. The State can't exceed its allotted funds but must enforce the rules - so who gets it in the neck but the local district which also has a limited budget.

This particular Superintendent of Schools would certainly like to implement all phases of the laws regarding the Handicapped as I believe they are right and just but until such time as Congress keeps its word on funding from the Federal level there is a practical limit to what we can possibly do with State and Local resources. We are still a long way from the 40% of a nationwide average per pupil cost as Federal support. When!!

Sincerely yours,

Charles B. Johnson
Superintendent of Schools

CBJ/mbg

cc. Dr. Marc Hull - State Department of Education

OFFICE OF SUPERINTENDENT OF SCHOOLS
ADDISON NORTHEAST
SUPERVISORY UNION DISTRICT
BRISTOL, VERMONT 05443

PHONE: 802-453-3657
802-453-3658

UNION HIGH SCHOOL DISTRICT 28
BRISTOL - MONKTON
NEW HAVEN - LINCOLN
STARKSBORO

September 23, 1980

Honorable Robert T. Stafford
The Senate Building
Washington, D.C. 20510

Dear Senator Stafford,

Would you please enter the following remarks regarding special education P.L. 94-142 into the Congressional Record.

P.L. 94-142 is a noble effort for a noble cause but it, like most federal legislation, has created discord among educators and heap upon heap of paperwork as well as regulation upon regulation that confuse not clarify. We not only have those problems to contend with but we have the hypocrisy of the U.S. Government and the failure to fund even to the levels promised which is meager indeed. I will elaborate on each of the problems.

1. My special education coordinator, my secretary, her secretary, numerous special educators and I have spent the better part of a week gathering information, writing verifying statements, checking locks on files and recording the information on a four page document in preparation for a federal audit visit on Friday of this week. We have previously provided the information to federal offices in Boston, Washington, D.C. and state offices in Montpelier. What is fascinating is that there is no question or query in the document about service delivered to students.

2. The non-supplanting clause requires us to hire personnel we do not need in order to keep the funds provided to us. I suggest funds be given to the local governments to spend on special education as they see fit.

3. The federal government has exempted itself from the provision of this law in their own schools. Federal and state legislators both vote whatever funds they care to, no matter how short it may be from their obligations. Federal regulations call for service at the expense of the local governments with no provision for deviation.

In summary, may I use this story that illustrates my frustrations when dealing with the federal government.

"A few years ago a little boy wrote a letter to God. Eventually it found its way to the post office, and the postal authorities brought it to the attention of the Postmaster General, Edward Day. The letter said that since his father died his mother was having a hard time making ends meet and wouldn't the Lord see fit to send his mother one hundred dollars to help out? The Postmaster General and his staff was so moved that together they got up fifty dollars and mailed it to the little boy's mother. Two weeks later another letter arrived from the little boy.

Dear God, thank you so much for all you have done, but we need another one hundred dollars. If you don't mind, when you send it to Mama, please don't route it through Washington because the last time they deducted 50 percent.

Yours truly,

Keith L. Hall

Keith L. Hall
Superintendent of Schools

KLH/m

cc: Senator Jennings Randolph
file

BARRE TOWN SCHOOL DISTRICT
Superintendent's Office
R.D. No. 2, BARRE, VERMONT 05641
802-476-7422

RAYMOND J. PROULX
SUPERINTENDENT

September 25, 1980

The Honorable Robert T. Stafford
Dirksen Senate Office Building
Room 5219
Washington, D. C. 20510

Dear Sir:

The following expressed concerns are in regard to P.L. 94-142 and are respectfully submitted to you for congressional record as submitted by the Barre Town, Vermont School District.

Public Law 94-142 has been a landmark piece of legislation causing long overneeded appropriate education for youth with special needs. Although many school districts have Special Education programs, Public Law 94-142 has created a well-planned and methodical process whereby local districts improved upon or created appropriate curriculum for the special education youth. When 94-142 was first enacted, it carried with it a promise from the federal government that the necessary appropriations would be coming forth to adequately assist local municipalities in paying for these expensive educational programs. Local school districts such as Barre Town made very definite financial plans based on the escalating sequence as indicated by the federal government. Much to our dismay, these funds have not come through as originally indicated and have thus created a financial burden at the local level. In addition to the financial burden, the fact that the federal appropriations have not come forth as promised has created a tremendous credibility gap between the local school officials, general citizenry and the federal government. It appears to us that the federal appropriations must come to the local districts as promised in order to resolve the financial burden of the local property taxpayers and to regain the confidence needed by and between local, state and federal government.

The Barre Town School District also feels that the nonsupplanting concept of 94-142 is unequitable to local school districts especially for those who are already providing advanced Special Education services to its youth. It would appear that local school districts such as Barre Town would continue to provide appropriate education to the special needs' youngsters and would have greater flexibility in fulfilling these obligations if a maintenance of effort clause were to take the place of the concept of nonsupplanting.

The Barre Town School District respectfully requests that the members of the United States Congress cause the necessary appropriations to fulfill the original promises and to make the necessary changes to incorporate the maintenance of effort clause rather than the nonsupplanting.

Thank you for your time and continued representation.

Sincerely,

Raymond J Proulx

Raymond J. Proulx
Superintendent of Schools

RJP/mvb

XBURY FAYSTON MORETOWN UNION H. S. DISTRICT 19 WAITSFIELD WARREN WATERBURY

WASHINGTON WEST SUPERVISORY UNION
MORETOWN, VERMONT 05660

WILLIAM A. LINCOLN
SUPERINTENDENT

802/244-5877 802/496-2272

WALTER BARBER
ADMINISTRATIVE ASSISTANT

September 22, 1980

Senator Robert T. Stafford
Dirksen Senate Office Building
Room 5219
Washington, D. C. 20510

Dear Senator Stafford:

I would appreciate it if some of my thoughts on PL 94-142 could be entered in the Congressional Record.

1. The intent of the law, in my opinion, is laudable. The impact it will have on students with learning handicaps should change the quality of many lives and, in the long run, save on welfare costs.
2. The legislation, as written, seems to include between 12% and 15% of the population and the regulations would support that range of percentages.
3. The funds we were assured (40% of the average cost per pupil for each child served) have not been forthcoming. In fact, the funding level is stalled at 12%.
4. Despite the commendable nature of the legislation, we will not be able to serve the 12% to 15% of the population unless and until the Congress accepts responsibility for providing funds at the 40% level.
5. It would seem that Congress has bitten off more than we, out here in the field, can chew and more than Congress itself is willing to chew.

Sincerely,

WALincoln
William A. Lincoln
Superintendent of Schools
Washington West Supervisory Union

WAL/k

ADDISON - RUTLAND SUPERVISORY UNION
FAIR HAVEN, VERMONT 05743
Office Phone: [illegible]
Area Code: [illegible]

STANLEY C. [illegible]
Superintendent
RAYMOND J. PENTKOWSKI
Asst. Superintendent
DAVID B. RYAN
Special Education Coordinator
MRS. WILMA K. HUGHES
Business Manager
MRS. DIANE WILLARD
Secretary

BENSON
CASTLETON
FAIR HAVEN
FAIR HAVEN UNION
HUBBARDTON
ORWELL
WEST HAVEN

September 22, 1980

Honorable Robert T. Stafford
Dirksen Senate Office Building
Room 5219
Washington, D. C. 20510

Dear Senator Stafford:

I am taking this opportunity to express concerns about Public Law 94-142. Three points are particularly worth noting.

First, school districts had hoped that funds for the handicapped would be much greater than they have actually been to date, although I realise 94-142 was basically a civil rights law.

Secondly, such funding should stress state/local "maintenance of effort", and not the issue of "supplanting". That is, districts should be able to fund items formerly funded with State/local monies as long as the total amount of State/local monies spent on the handicapped is not diminished!

Lastly, if Congress could make one change that would lead to greater efficiency in the administration of PL 94-142, I submit that the change should be to require only annual or bi-annual "request for fund" reports. The requirement for quarterly reports for all Federal grants (EHA-B, Title I, Title IV, etc.) is a gross waste of taxpayers' funds and school districts' time!

I ask that my remarks be entered in the Congressional Record.

Sincerely,

Raymond J. Pentkowski
Assistant Superintendent

RJP:dw

SEP 29 1980

[illegible] · [illegible] · [illegible] · UNION HIGH SCHOOL DISTRICT No. 2

ORANGE SOUTHWEST SUPERVISORY UNION
RANDOLPH, VERMONT 05060
(802) [illegible]

A. ROBERT TWISS
SUPERINTENDENT OF SCHOOLS
STEPHEN KINNEY
SPECIAL EDUCATION COORDINATOR

The Heart of Vermont

Received
Date 9-30-80
Subcommittee on
The Handicapped

24 September 1980

Senator Jennings Randolph
Dirksen Senate Office Bldg.
Room 5219
Washington, D.C. 20510

Dear Senator Randolph:

I received a memo today from Dr. Marc Hull of the Vermont Special Education Department indicating that we may express concerns about P.L. 94-142 and have them entered into the Congressional Record.

I have personally and professionally been involved in the field of special education for over fourteen years. I feel that we have made great progress for our special children and that overall parents are very pleased. I support the federal law and feel that most of it is very appropriate and helps the states and local school districts in carrying out the intent and spirit of the law. However, I feel strongly that the federal government has not made the financial commitment that was originally proposed. I understand that the funding level this fiscal year is around 12% compared to the proposed 30% in excess costs. We are receiving around $170 per child this year which doesn't go very far.

The other area of commitment both financially and through the spirit of the regulations has to be regarding preschool special needs children and students with emotional impairments. In three states that I have served regarding special education, more financial commitment needs to be in these two areas. I am new to Vermont; however, I can see the need to pick up special needs children early and we have very little locally both in monies and in programming in order to meet these needs. We seem to have less when it comes to students with severe emotionally needs.

Overall, and in closing, I feel that all of us are committed to these students and only hope that as the years unfold we continue to meet the challenge.

Sincerely,

Stephen H. Kinney

Stephen H. Kinney
SPED Coordinator

cc Dr. Hull
Mr. Twiss

Orleans-Essex North Supervisory Union

Administrative Office
Derby Center, Vermont 05829

BOARD OFFICERS:
Chairman — John Brigham
Vice-Chairman — Peter Houghton
Clerk — Rosemary Willis
Treasurer — Maurice Provost
Ass't. Treasurer — Rosemary Willis
Ass't. Treasurer — Nancy Castle

SUPERINTENDENT:
Norman L. Lewis

SPECIAL PROGRAMS DIRECTOR:
Norman R. Messier

SECRETARY:
Elizabeth C. Brainard

BOOKKEEPER:
Janice P. Bowen

SCHOOL DISTRICTS:
Superintendent: Bernard C. Forbush
North Country Union High School

Superintendent: Norman L. Lewis
Supervisor: Norman R. Messier
Brighton
Charleston
Derby
Holland
Morgan

Superintendent: Willard S. MacBride
Supervisor: Carlyn B. Hobans
Coventry
Jay
Lowell
Newport City
Newport Town
Troy
Westfield

Telephone:
766-2251
766-2252
334-[illegible]

September 29, 1980

Robert T. Stafford
Dirkson Senate Office Building
Room 5219
Washington, D.C. 20510

Dear Senator Stafford,

I would like to have the following comments entered into the Congressional Record with regards to PL 94-142.

PL 94-142 makes the school responsible for many areas which have not been traditionally school responsibilities, ie: providing family counselling services, providing health services, providing some kinds of psychological services, providing physical and occupational therapy. With the passage of the law those agencies that were responsible in the past have withdrawn their services as they interpret the law to be that the school has the responsibility.

If this was the intent of Congress, then it is very disturbing that they have not provided funding that would adequately provide for the services. It is impossible for local school districts to absorb the cost of all of these services. It could be as much as $25,000.00 for one student.

If the school is to provide social services for everyone, then legislation must be passed enabling the school to direct present agencies to provide certain services. It would further seem appropriate that there must be some way of determining parent, guardian or state responsibility for the child.

Sincerely,

Norman R Messier

Norman R. Messier
Special Programs Director

NRM/pr

cc: [illegible]rman Lewis

WINDHAM SOUTHEAST SUPERVISORY UNION
SPECIAL SERVICES CENTER
96 Green Street
Brattleboro, Vermont 05301
802-254-9661

WSESU

Special Education
Learning Disabilities
Speech/Language
Title 1

September 29, 1980

Senator Robert T. Stafford
Dirksen Senate Office Building
Room 5219
Washington, D.C. 20510

Re: Oversight Hearing
P.L. 94-142

Dear Senator Stafford:

I would like the following comments to be entered in the Congressional Record.

I wish to express concern about two issues regarding the ongoing implementation of P.L. 94-142. The first issue applies to the Related Service section; 121a 13; specifically Item #2, Counseling Services. If the government interpretation of such services continues, it will force the public schools to intensify these services and the L.E.A. will find itself in one of the following situations:

a) competing with local mental health agencies and/or private mental health professionals;
b) needing a considerable increase of federal and state monies;
c) being allowed to receive third party payment for these services.

A similar situation applies to the related service of #5, Occupational Therapy, and #7, Physical Therapy.

The second issue is concerned with the regulation of "non-supplanting". Although this is dealt with more at a state level, the financial ramifications resulting in loss of vital services to handicapped students are felt keenly at the local educational agency level. It appears to be caused by the lack of flexibility which arises from the procedures of non-supplanting. This is particularly difficult for us to accept as the state and local effort is being maintained and generally increasing. It has been suggested that "maintenance of effort" would be a fairer provision.

Thank you for seeking information about our concerns and this school district would urge your careful consideration of these important aspects of P.L. 94-142.

Sincerely,

Barbara Rocray
Barbara Rocray
Dir. of Special Services

BR:pb
cc - James Cusick, Supt.
Marc Hull, Ph.D., Vermont Dept.
of Education

NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.
1425 H St., N.W., Suite 600, Washington, D.C. 20005 (202) 628-6800

Testimony of

Helen Tyler, ACSW

Received
Date 12-[illegible]
[illegible] Committee on
The Handicapped

on behalf of

NASW COUNCIL ON SOCIAL WORK SERVICES IN THE SCHOOLS

before the

Senate Subcommittee on Education for the Handicapped

on the subject of

The Education for All Handicapped Children Act

(P.L. 94-142)

United States Senate

SENATE OVERSIGHT HEARINGS ON P.L. 94-142

I am writing on behalf of the 82,000 professional members of the National Association of Social Workers to put on record our statement of continuing support of and continuing concern about implementation of P.L. 94-142, the Education for All Handicapped Children Act.

The challenge of P.L. 94-142 lies in its attempt to bring together four service systems on behalf of handicapped children in this country. Currently, public education represents this country's only mandated universal service system, under which education must be provided at no cost to the family. But, in addition, P.L. 94-142 mandates provision of related services. This is a significant statement in that it recognizes that the cognitive growth of children cannot be isolated from their social and emotional growth, nor can health needs be ignored.

Specifically, NASW recommends the following:

1. That P.L. 94-142 be reathorized substantially intact. At a time when the law is to be amended; we recommend that social work services, which are identified and defined under the regulations, be added to the text of the law itself.
2. We recommend that the Congress make every effort to close the gap between appropriation and authorization levels for the law.

3. The Office of Special Education and Rehabilitation Services should require state and local education agencies to employ personnel skilled in facilitating collaboration between schools, families, and community agencies.

Current thinking in the Office of Special Education and Rehabilitation Services is placing heavy emphasis on the writing and implementation of interagency agreements as the best method for facilitating delivery of related services as specified in 94-142. As professional social workers, whose practice is based on the interaction of the individual with his/her environment, we are keenly aware of the professional skill, that needs to be exercised at all levels of government, in order to promote meaningful implementation of such written agreements. As a professional association whose members are employed in education, health, mental health, and social service settings, we are in a unique position to offer our knowledge and skill in the writing of interagency agreements and in facilitating delivery of special education and related services to children.

NASW's Standards for Social Work Services in Schools (copy attached) state that the goals, objectives, and tasks of a school social work program shall be clearly and directly related to the purposes of the school, the educational process, and the use of Educational opportunities by pupils. An identified task of school social workers based in the schools, is that of consultation, collaboration, and planning with community representatives to provide a full range of services to children.

As a way of sharing with you the complexity of the interrelationship not only of education, health, mental health, and social services but of the challenge of communication and coordination needed to deliver appropriate social services to children in a given setting, I am incorporating a portion of a report[1] prepared by representatives of the public schools and a variety of community based services in Minneapolis. These include county court services, child protection services, and child welfare services. They concluded that there was little or no duplication of social services between school and community, that in fact the school based services, in having access to the total range of children in the community were in a position to facilitate the work of the community based service. I quote from their report.

- An Ad Hoc School-Agency Committee could serve this purpose (of legislative intent that networking occur), coming together upon invitation by the School District as needed to review previous positions and/or to consider new issues.
- The metro area social service community is vast and complex. The Committee endorsed the current representation of the Ad Hoc School-Agency Committee as being essential to discuss the issues raised, but did recommend the inclusion of representatives from mental health centers for future efforts.
- A data collection system should be implemented that could document the magnitude of community social services being delivered to students and their families. Data collected should include not only documentation of direct service but parent education groups, classroom projects, community education programs, and the like. Data currently collected by the School Social Work Program reveals only a small amount of the service that is actually being delivered by community agencies.
- The increase of mandated educational programs that draw for implementation on the services of the school social worker dramatically increases the necessity for schools to utilize community social services whenever and wherever they are available. The school social workers' role as a referral agency may be significantly highlighted in the 80's.

- School social workers have a responsibility to educate legislators, congressmen, and the public on the differences between school social work and social services offered by community resources. The public needs to understand that these two services supplement and compliment one another and do not nor should not duplicate one another.

As a professional association, we believe that the public schools must assume a part of the responsibility for provision of related services under P.L. 94-142. To assign this total responsibility to other community agencies is to deny the complexity of intersystem interaction in this country.

---

[1] School/Community Agency Position Statement, Minneapolis Public Schools, School Social Work Program, 1979.

HT:MF:db
9/17/80

600 9th Ave. # 601
Seattle, Wn. 98104
November 12, 1980

Senator Jennings Randolph
United States Senate
Subcommittee on the Handicapped
4230 Dirksen Senate Office Building
Washington D.C. 20510

Dear Senator Randolph:

TESTIMONY FOR THE HEARING RECORD ON PL 94-142

We feel strongly there is a need for the establishment of special programs for our 12-16 year old children who are deaf; programs designed to establish and maintain a feeling of self worth. These programs to be included in the school curriculum and extended throughout the summer months when school is not in session.

Research and subsequent reports have shown that between the ages of 12-16, our deaf children are rejecting their hearing aids, not wanting us to sign to them in public, wanting to be with their deaf peers only, and are trying desperately to achieve some feeling of self importance, and awareness of their individuality.

It is further documented that the residential schools for the deaf offer our chidren an opportunity to interact with their peers in an after school setting and are therefore better adjusted sociologically. The public school system offer no programs in this area in special education and the residential State School for the Deaf in Vancouver Washington offers no summer programs at all.

Special programs for our 12-16 year old children who are deaf, need to be considered and therefore we feel should be included as a subject for testimony on the upcoming hearings on PL 94-142.

Your inclusion of these concerns in terms of testimony for the hearings on PL 94-142 would be gratefully appreciated and warmly received.

Sincere regards,

Mozelle Sims

Ms. Mozelle Sims
V.I.P.S.-Vancouver Involved Parents Group/Seattle

COLCHESTER SCHOOL DISTRICT

COLCHESTER JUNIOR HIGH SCHOOL
MALLETTS BAY AVENUE
COLCHESTER, VERMONT 05446
TEL. 802/655-1772

Francis V. Murphy
Director Special Education

September 29, 1980

Received
Date 10-2-80
Subcommittee on
The Handicapped

Senator Robert T. Stafford
Dirksen Senate Office Building
Room 5219
Washington, D. C. 20510

Dear Senator Stafford:

First, let me express my gratitude to you for the opportunity to voice my concerns regarding P.L. 94-142. In every way possible I support the philosophical and, I believe, constitutional statement which P.L. 94-142 makes. Incumbent with this must be the understanding that the more equal our society becomes, the less freedom to a point is enjoyed. This is clearly seen in the restrictiveness of the paperwork necessitated by P.L. 94-142. Much of what you will doubtless hear concerning P.L. 94-142 is that it is restrictive. As an administrator, I can attest to this readily. However, were I given the choice between the State of Art which existed prior to P.L. 94-142 and the present, I would easily choose the latter. I have little patience with those who moan and groan just because there is more paperwork or because it is necessary for LEA'S to allocate funds for children they previously ignored. In the past, special education at the local level was offered with an arrogant charitableness. Parents were made to accept what was given.

Now the tide has turned; perhaps too much so, but it is the Educational System by its lack of awareness, ignorance and refusal to face certain facts boldly which planted the seed which blossomed as P.L. 94-142.

As in any period of change, there is always a pendulum effect, beginning with an over-reaction to the left but eventually settling on a point of moderation. From an evolutionary standpoint, P.L. 94-142 is now in a position of the extreme.

Every responsibility conceivable is being abdicated by parents, public agencies, insurance companies, etc. and is being placed firmly on the school. This state of the art must be changed. The direction, both 504, but specifically P.L. 94-142, has placed the school in is one of even escalating responsibility. The Dakota Letters sent out by the

Prudential Insurance Company which previously paid for physio therapy and counseling, informed parents that coverage for such services was now the responsibility of the LEA'S. While P.L. 94-142 does not preclude third party payments, it does not mandate the continuation of such payments by companies currently providing it.

The abrogation of responsibility does not end here. Social Services Agencies also are beginning to develop policy changes which place "responsibility for a child's attendance in school" on the school. I submit to you that such policies are extreme, impossible to fully implement and not in the best interest of the child.

It is my judgement that guidelines for Public Agencies impacting on P.L. 94-142 should be as carefully constructed as they are in regards to the LEA. The continuum of services to which P.L. 94-142 speaks is a very limited radius, i.e. school. The regulations should be extended to involve all necessary service deliverers.

Another point I wish to comment upon is the categorical nature of the law. First of all, this is a contradiction of current Educational Philosophy. In addition, it is a cumbersome and inarticulate method for designation of service. It is far easier to sight a student's educational needs than it is to label him L.D. or M.R. Mental retardation, for example, is a serious designation and proper identification is contingent upon numerous variables; 1. adaptable behavior, 2. performance, 3. educational assessment, and 4. thorough psychological testing.

This is a long and arduous process involving many man hours and considerable expense. While I can concur with the process; if placement within a class for the mentally retarded is indicated, I cannot if the student can be mainstreamed with part-time assistance in a Resource Room. It just isn't necessary. All that is necessary in a mainstreamed situation is to meet the student's needs. The same argument is operative in regard to S.L.D. Again, P.L. 94-142 is requiring labeling for the sake of labeling. S.L.D. is a category of tremendous variance again requiring extensive evaluation procedures. This seems needless when regardless of whether the label fits or not the child still requires help. In short, the categorical nature of the law should be dropped and substituted with an emphasis on degree of difficulty.

September 29, 1980
Page two

The preceeding discussion contains my most profound concerns. I hope my comments have been useful and will assist you in your efforts.

Sincerely,

Francis V. Murphy

Francis V. Murphy

94-142 Report

TESTIMONY TO THE SENATE SUB-COMMITTEE ON THE HANDICAPPED, OF THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

Stanley Salett

The Result of a National Survey On Parents' Experiences in Participating In Individual Educational Plan Provisions of PL 94-142

National Committee for Citizens in Education
410 Wilde Lake Village Green
Columbia, Maryland 21044
596-5300

October 1980

94-142 Report

TESTIMONY TO THE SENATE SUB-COMMITTEE ON THE HANDICAPPED, OF THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

I. Introduction

Mr. Chairman, members of the Subcommittee, my name is Stanley Salett, Senior Associate of the National Committee for Citizens in Education.

The NCCE is a nonpartisan, nonprofit organization dedicated to increasing parent/citizen involvement in the issues and policies of our nation's public schools. We work with a network of over 325 parent/citizen groups which are active in public education at the local and state level, and which represent 250,000 members. One of the beliefs we share is that decisions affecting the lives of children should be open to public scrutiny.

We have found that a growing body of research demonstrates that parental involvement in school activities has a positive effect not only on school policies, but on student achievement as well. Over a decade ago, for example, James Coleman made his now-famous report to the Department of Health, Education and Welfare, which showed, among other things, that student achievement is higher in schools with active parent organizations.[1] And a 1973 HEW study found that two key factors in academic success were students' and parents' expectations, and the extent to which parents engaged in activities supportive of these expectations.[2]

---

[1] James S. Coleman, et al., Equality of Educational Opportunity (U.S. Dept. of Health, Education & Welfare, Washington, DC, U.S. Government Printing Office) 1966. See also Christopher Jencks, "The Coleman Report and Conventional Wisdom," in Mosteller & Moynihan (eds.) On Equality of Educational Opportunity, (NY, Vintage) 1972.

In addition, the recent report by the Carnegie Council on Children, The Unexpected Minority: Handicapped Children in America[3] argues strongly that parent involvement is critical as a corrective to the devastating vulnerability of the handicapped child. In his foreword, Kenneth Kenniston writes, "The greatest harm to the handicapped child stems from the socially engendered impairment of daily life, self-concept, and future--not from functional impairments themselves," (emphasis added).

A child with a disability is often treated as though there is something medically wrong, from which he or she is supposed, somehow, to recover. The child becomes a life-long patient, whose entire family must submit to domination by professionals, and who consequently is excluded from normal expectations. The child's incapacity becomes an excuse for asserting professional expertise, and, as the authors assert, "a more striking abuse of our culture's concept of the expert cannot be imagined. In every handicap speciality," the report continues, "it is essential that parent and professional actively work together on the child's behalf."[4]

---

2. Mayeske, George W., "A Study of the Attitude Toward Life of our Nation's Students," (Washington, DC, U.S. Department of Health, Education & Welfare) 1973.

3. John Glidzman and William Roth, The Unexpected Minority: Handicapped Children in America, (Harcourt-Brace, NY) 1980.

4. Ibid. p. 145.

Our own experience with parent/citizen groups also leads us to conclude that it is indeed wise policy for the federal government to encourage parent participation in public schools. We strongly support the provisions in PL 94-142 requiring parent involvement in the development of individual education plans (IEP's) for their handicapped children, and protecting that right through procedural safeguards and confidentiality requirements.

II. NCCE Study

Once PL 94-142 became effective, NCCE decided that independent monitoring of the parent participation provisions was necessary. Beginning in November 1978, together with a research team based at Ohio State University and a coalition of more than 400 state and local volunteer organizations, we conducted a survey to examine the parent's role under the law and to answer such questions as

- Are affected parents aware of the law and their rights under it?
- Have schools notified parents that their presence is required at an IEP meeting?
- Has a meeting been held, and how were parents treated at it?
- Are educators helpful? Are they listening to parents?
- Is the program resulting from the IEP meeting based on what a child needs or on what the school system has to offer?
- Do parents know they can appeal IEP's made for their child?

Nearly 2,500 parents of children with various handicaps took the time to complete and return our questionnaire. To our knowledge, it is the only national survey focussed upon parent participation in PL 94-142.

The next phase of our study was to examine the program administrative reviews conducted by the Bureau of Education for the Handicapped, now the Office of Special Education (OSE), in each state. We identified IEP-related areas cited by OSE for corrective action, to determine the extent of state compliance with the law, and to assers the administrative burden and performance of OSE.

This study was supported by the George Gund, Field, New World, and Hearst Foundations. No federal funds were involved.

III. The Survey

First, I would like to discuss the findings of the parent/citizen survey. If you have no objection, Mr. Chairman, I would like to have entered into the record a copy of the questionnaire and responses tabulated. Nearly 2,500 parents from 438 school districts in 46 states (including West Virginia and Vermont) responded to the survey (see Attachment A).

Considering that PL 94-142 had, at the time of the survey, been in effect only one school year, the IEP process seems to be working basically quite well, although there is room for significant improvement.

- Nearly 60% of the parents report that an IEP meeting was held within 30 days of their child's evaluation. Only 6% report that a meeting was never held.
- Over 70% said that the information about their children's evaluations was "fair and useful," that educators presented the IEP "in understandable language," and that there was an opportunity to ask questions.
- According to 83% of the parents, the meetings were well attended; 77% said teachers were present, and 66% said other "school representatives" attended. (Only 18% of the parents, however, reported that their children were present.)
- 70% of the parents reported that the IEP's did contain important basic information: annual goals, short-term objectives, specific services to be provided, present performance levels, and the dates that services were to begin.
- 63% of the parents felt adequately informed about the IEP and 70% felt that the IEP "seemed to fit" their children's needs. Only 5% refused to approve the IEP's.

I think these figures indicate that the idea of an individual education plan for every handicapped child, drawn up in consultation with the child's parents, has had success.[5] Such a massive undertaking has required an enormous amount of time, energy, and commitment from everyone involved--teachers, administrators, and parents--and it is indeed a tribute to the wisdom of the Congress, and of this Subcommittee, which played such an important part in the legislation, that it has worked so well.

On the other hand (there is always another hand--I think it was President Truman who said that what he needed was a one-handed advisor) there are some substantial problems.

- Parents are not participating as full partners in the development of the IEP's.
  - -- a majority (52%) of the parents reported that the IEP's were completed before the meeting.
  - -- nearly 30% reported that the IEP's do not contain ways for parents to check their children's progress.
  - -- 30% reported that the IEP did not indicate how much time the child would spend in a regular classroom setting.

---

[5] A few caveats should perhaps be noted. Because the survey was not done by random-sample, there will be a bias, in that parents most likely to seek active participation in the IEP process would also be the most likely to respond to a questionnaire. A breakdown of respondents by geographical area, size of school district, and sex, age, and handicap of children, however, does correspond roughly to the population as a whole. Copies of the data analysis are available upon request.

  - -- 40% reported that no specific date was set for reviewing a child's progress, and one-third reported that no mention was made of how, when, or by whom a child's progress would be checked.

- Parents are not being prepared to participate in the IEP process. In fact, over half the school districts covered in the survey do not have a program to prepare parents.
- Information on how to appeal a contested evaluation or IEP was not made available to nearly 46% of the parents surveyed.
- And while the most basic requirements of the IEP have been met, still a full 45% of the parents reporting felt that the annual goals set in the IEP did not fully meet the educational needs of their children.

A further analysis of our data shows that the parents of mildly handicapped children are generally more satisfied with IEP procedures than are the parents of severely handicapped children. Also, we found that smaller school districts (those serving fewer than 5,000 children), as well as parochial schools and state-operated programs, are having greater difficulty in meeting IEP requirements.

IV. Monitoring of State Performance

The major administrative responsibility for PL 94-142 lies with the State Education Agencies (SEA's), which are required to assure that a free, appropriate public education is available to all handicapped children between the ages of 5 to 18 (§ 612(2)(B)), and that the Local Education Agencies (LEA's) have carried out all the requirements of the law (§ 612(6)). To ensure that the states have, in fact, met this responsibility, the Office of Special Education (OSE) schedules Program Administrative Reviews (PAR's) in each state approximately every other year.

For this portion of the study, our staff, together with Policy Analysts from the Youth Policy Institute at the Robert F. Kennedy Memorial, read all the PAR reports and charted the corrective actions dealing directly with parent or public involvement. If the Chair has no objection, I would like to have the charts entered into the record.

Before I present our findings, I would like to make a few probably tedious points about methodology and approach. Although OSE is supposed to visit each state every two years, severe shortages of funds and personnel have forced delays and cancellations. Consequently, most states have had only 1 PAR since the law became effective three years ago.

- Arizona, Kentucky, and Massachusetts have not been reviewed since 1977.
- Colorado, Delaware, North Carolina, South Dakota, Utah and Washington had not, as of this spring, been reviewed since the first half of 1978.
- Reviews scheduled for 11 states this year were cancelled: North Carolina, South Carolina, Kentucky, Delaware,

Massachusetts, Arizona, Idaho, Indiana, South Dakota, Utah, and Washington.

The first PAR in a state is intended to determine whether the state education agency can actually make reliable assurances that the law is being fully implemented; that is, whether its administrative apparatus is in working order, its state laws are in accord with federal law, its policies are properly written, and its directives have been adequately disseminated. It is largely concerned with policies, procedures, and systems, rather than actual operating conditions. Although several local school districts are visited as a double-check, they were not identified in the report.

The second PAR is conducted primarily through "site visits" to local districts, regional centers for the handicapped, if they exist, and state institutions. All the areas checked in the first report are again checked, to determine the extent of local (or agency) compliance and the effectiveness of the state monitoring system. In the second report, the districts are identified and the corrective actions cited for each one.

Even though a single format was used for each PAR series, allowing standardized comparisons and monitoring of corrective actions, the quality and depth of the reviews varied enormously. No matter what the size, complexity, or reputation of the state, the visits lasted only 5 days, and only in rare cases did the teams have more than 5 or 6 members. (Some of the most recent

PAR's have entailed short advance visits and larger teams, a needed improvement). Also, the cancellation of many second PAR's makes comparison difficult. In some instances, PAR's conducted before or just after the law was effective (10/1/77) have to be compared with others completed 3 years later.

I would like, therefore, to caution the Committee that our data should be taken more as a measure of the technical assistance, monitoring, and enforcement load of OSE than as a record of its effectiveness. And similarly, that the charts represent more the magnitude of problems with state compliance than an accurate picture of their performance. In many states, corrective actions have been taken, and full compliance, at least as far as there is an SEA monitoring system capable of assuring implementation, has been negotiated to OSE satisfaction. It is possible, therefore, for many of the corrective actions charted to have been made by now; and yet it is also possible that many LEA's are still not in full compliance despite state assurances.

Now we get to the findings. In the areas we studied, which were IEP procedures, content, and participation; procedural safeguards; and confidentiality of records, we found serious compliance problems in at least one area in every state reviewed. (New Mexico has declined to participate in PL 94-142).

- 47 states and the District of Columbia had corrective actions cited for IEP procedures. (Massachusetts was not cited because the PAR took place before the law went into effect; Pennsylvania also was not cited).

- 48 states and the District of Columbia had to take corrective actions to guarantee procedural safeguards (Massachusetts again was excepted).
- 48 states and the District of Columbia had corrective actions cited for procedures to protect the confidentiality of school records (Vermont, the lone exception, was praised for its adherence to the confidentiality requirements).

For a more complete picture, see Chart I.

The major problems we identified in IEP procedures were

1. Assuring IEP's for all children in state agencies or private schools (20 states were cited for violation).
2. Having the IEP in effect prior to providing services (18 states cited).
3. Rounding up the proper participants for the IEP meetings (36 states, 25 cited for inadequate efforts to include parents).
4. Arranging timely notification and convenient meeting times for parents, and keeping records of attempts to reach parents (30 states cited).
5. Ensuring that basic IEP contents are complete (34 states cited).

The problems with procedural safeguards lie primarily in:

1. Informing parents of their right, under prescribed circumstances, to an independent evaluation, at no cost, to an impartial due process hearing, and to an appeal (43 states cited).

2. Giving prior written notice to parents about their child's placement and obtaining their consent (40 states cited).
3. Adhering to proper hearing timelines (17 states cited).
4. Providing surrogate parents when needed (35 states cited).

Nearly every state (except Massachusetts) had to take corrective action in at least one of these areas. Again, for a more complete picture, see Charts I and II.

The third provision for parents' and children's rights that we examined, confidentiality of school records, was also not well enforced. School districts have been required since 1974 by the Buckley Amendment (Family Educational Rights and Privacy Act) to implement a school records policy protecting the confidentiality of a child's records and guaranteeing access to parents. The only additional safeguard for handicapped children provided by PL 94-142 is that parents may request that, once their educational value has ended, any personally identifiable information in their child's records be destroyed.

1. Most school districts lacked proper procedures to shield the records from unauthorized access, and most failed also to keep a record of who had obtained access (34 states cited).
2. In at least 30 states, parents were not informed of their right to have records destroyed.
3. Lists of types and locations of records are not maintained in many states (22 were specifically cited). (See Chart II).

According to OSE staff, there is no real evidence that parents are being deliberately denied the right to see their children's records, but the PAR's clearly show a pervasive pattern of sloppiness at the district level and inadequate direction from the states. The review teams from OSE seemed also to assign confidentiality a low priority, for the reviews of records procedures were seldom thorough or precise. In two states where corrective actions were cited during the first PAR, confidentiality was not mentioned in the second, otherwise more thorough, report (DC and Virginia).

V. Conclusions

To those familiar with other reports on PL 94-142, and with the voluminous testimony that this subcommittee has heard over the past year, our findings will not come as a surprise. The Education Advocates' Coalition Report last spring, for example, found that many handicapped children had not received IEP's or that the IEP's were "canned," (i.e., prepared before the IEP meeting, using standardized language), that most states have no system for appointing surrogate parents, and that inadequate notice of rights under the law and unnecessary procedural hurdles are often used to discourage parents from full participation.[6] These problems were evident both in our survey and in the PAR's.

---

[6] "Report by the Education Advocates' Coalition on Federal Compliance Activities to Implement the Education for All Handicapped Children Act," (Children's Defense Fund, Washington, DC) April 16, 1980.

Many excellent recommendations were made in the Advocates' report, in other reports, and in the testimony presented. We do not intend to recapitulate or repeat them here, but we do have some observations and further recommendations the Subcommittee and others may find useful.

In both legislation and regulation the law offers too little guidance on parent participation. Other major federal education programs devised to serve a specific category of children in need--Title I, ESEA, the Bilingual Education Act, the Emergency School Aid Act, for example--recognized the importance of an independent committee or council, composed of a majority of parents, to provide help to other parents and to hold local officials accountable for the use of federal funds. Despite the commendable avenues for individual parent involvement required in 94-142, there is no mention of local parent councils. It is our experience that when state and local education agencies seek outside opinion, if they seek it at all, they work only with a select set of people and often in a very closed way.

Yet the Carnegie Council report concludes that "perhaps more than anything else, it is essential that parents of handicapped children organize themselves into self-help groups,"[7] (emphasis added). These can provide parents with alternative sources of information and moral support, as well as the greater leverage against professionals and the school system so necessary to counteract their children's vulnerability.

---

[7] Glidzman & Roth, op. cit., p. 170

Accordingly, we would recommend that:

- Guidelines be written, or the regulations amended if necessary, to permit use of local administrative funds (up to 5% of an LEA allocation) to support a parent advisory group offering services such as
  1. Providing basic information on PL 94-142 to all parents of handicapped children in the local school district, including information on how to appeal an evaluation, an IEP, or a placement.
  2. Reviewing the local school system's plan for implementing PL 94-142 and holding public meetings on the plan.
  3. Developing a roster of interested citizens and agencies, including parent/citizen organizations, which can offer services and should be informed of the group's activities.
  4. Encouraging and assisting school personnel to conduct a parent training program about the law, the IEP process, and to answer questions parents may have.
  5. Assisting school personnel in a training program for teachers on how to work with parents on the IEP.
- OSE policy papers on IEP's should strongly recommend that all IEP's contain specific items for parent involvement:
  1. How to check the child's progress.
  2. At-home activities that can reinforce the education program.

3. Check-point intervals for parents to confer with teachers and to revise and update the IEP. (Over 40% of the parents we surveyed stated that no date or method for reviewing progress was specified.)

- OSE should also specifically require, in its policy papers and through its monitoring system, that an IEP may not be completed before the parent meeting, that a completed copy be made available to parents a reasonable time after the meeting, and that all parents be informed at the meeting of their right to an appeal.

In light of the Carnegie Council report and the experience, not only of advocacy groups but professionals in special education, who strongly endorsed the parent involvement provisions in the original legislation, the strongest possible parent participation is necessary to the full success of this program. We feel that these recommendations are within the intent of the law and could be implemented easily and with minimal cost.

The remainder of our conclusions deal with the second part of our study--the federal and state administration of PL 94-142, specifically the parent involvement provisions. Given the magnitude of this law--the tremendous change in state and local policy and practice it requires--and its status as a virtual civil rights act, it is clear that the Office of Special Education is painfully under-staffed and under-budgeted. The amount of funds OSE received in fiscal year 1980 to administer the law--that is, its allocation for salaries and expenses--is .17% of its total program budget, less than two-tenths of one percent ($1,875,000 to administer a $1.1 billion program). The total salaries and expenses for the Department of Education is 1.6% of its operating program budget, or proportionately ten times higher ($238,638,000 to administer $14.5 billion). The administrative budget for the Office of Rehabilitative Services, in another sharp contrast, is 1% of its total operation ($9,854,900 to administer $931,319,000).[8]

The Division of Assistance to States, which is responsible for policy development, technical assistance, and enforcement, not only lacks adequate staff and funding, it has also been poorly organized. A 1977 plan to establish three branches, one for each function, was never approved. Consequently, since January 1978, enforcement and technical assistance have both been lodged in the Field Services Branch. The job to review all state plans, conduct all PAR's (each state plus Puerto Rico, the Virgin Islands, and the Trust Territories, every two years), and monitor all corrective actions, has fallen to a staff of sixteen professional staff and three Section Chiefs.

It is generally agreed among advocacy groups[9] and agency staff that a review schedule of every two years is minimal,

---

8. FY 80 Estimate, Dept. of Education, "Mission Budget," in Justification of Appropriation Estimates for Committees on Appropriations, FY 81, pp. 99-110.

9. Education Advocates' Coalition, op. cit., pp. 11, 15, 20.

especially considering the enormous problems of compliance documented here, and that the staffing level to do even that is skeletal. But compounding the problem is that there have been several vacancies in the Field Services Branch over the past few months that cannot be filled because of the freeze on hiring. This has meant that eleven PAR's had to be cancelled this year, three in states that have not been reviewed since 1977.

There is also a larger question of the wisdom of assigning both assistance and enforcement functions to a single official, aside, of course, from the basic problem of overload. In practice, it seems to result in protracted negotiations, not just over the PAR findings (while the average lapse between site visit and final report is 3½ months, for some states it is as long as 6 months, and for two states a full year), but over the timelines for corrective actions, too. In the eleven states where two PAR's had been completed at the time of our study, nearly every one had the same problems cited the second time as had required corrective action in the first report.[10] (See Chart III).

On September 29, as the final version of this testimony was being written, OSE announced that a reorganization plan has finally been approved. Compliance and technical assistance will be separate functions, each with its own branch chief and staff. Policy development, the third branch, will remain separate. Dr. Ed Sontag, the Acting Director of the Division of Assistance to States, has assured us that compliance will be its top priority, that thirty-one states will be visited this year, and that all cancelled PAR's have been rescheduled.

---

[10] The process of monitoring corrective actions at OSE is not monitored clearly enough to study more systematically how long it takes the states to meet their timelines.

A decision has also been made to increase Division staff by ten professionals. The technical assistance branch (Field Services) will have a Chief and 23 professionals (an increase of four), and the new compliance branch will have a Chief and 11 professional staff.

Because we held a long series of meetings with the Division staff while the reorganization plan was being designed, much of the information contained in this report had a formative effect. While we are delighted that the reorganization has been approved, we do feel that the staffing level is still inadequate. If the former staff of nineteen professionals could not meet its compliance load, as this report clearly shows, the new compliance staff of eleven professionals, even relieved of technical assistance responsibilities, is going to be hard-pressed.

It hardly seems fair to criticize OSE further, when it has only just been given the means for self-improvement. The staff we have worked with in preparing this report has been very competent, cooperative, and self-critical. It is, in fact, the most highly impressive and professional staff we have encountered in a government agency. If the bureaucracy is bloated and inefficient, as its critics allege, the evidence is not to be found at OSE; and we wonder what the effect of the mandated reduction of 500 personnel that was required for a separate Department of Education will be on its performance.

Nevertheless, a few recommendations should be made here. Now that OSE petitions for increased staff and reorganization have been heard, I am confident that these measures will be considered:

- The schedule for PAR's should be changed and made more flexible. States with serious compliance problems should be visited more frequently than those with better records. The length of the visit and the size of the team should also be adjusted according to circumstance. Other recommendations about better use of data, cooperation with the Office of Civil Rights, and contents of the PAR's have already been made by other groups, especially the Advocates' Coalition, and we fully support them.
- A visible, regularly updated, and comprehensive system of monitoring corrective actions is desperately needed. Information, correspondence, and documentary materials from each state now lie in folders and it is impossible easily to determine its status on meeting timelines or taking action.
- OSE needs, at minimum, to identify and disseminate "best practices" among the states. In some areas, such as IEP manuals for parents or teachers, or examples of

proper written notice, OSE should develop its own models for recommended use. Many school districts are groping in the dark and a system of trial and error is not only harmful but unnecessary.

- OSE should be more sensitive to the needs of parents when it develops materials for state and local officials. The otherwise well-done recent policy paper on IEP's drafted by the Division of Assistance to States (May 23, 1980), for example, does not consider any of the items we recommend above--assisting parent groups; revising IEP's to contain specific times for review, supportive at-home activities, or ways to check a child's progress; discouraging "canned IEP's," informing parents of hearing rights at the IEP meeting, and providing copies of IEP's--all issues raised regularly by parent advocacy groups.
- OSE should also develop a compliance/monitoring agreement with the FERPA office, similar to that worked out with OCR.

Thank you, Mr. Chairman and members of the Subcommittee, for this opportunity to present our report and conclusions. We hope it has been helpful in your oversight of PL 94-142.

Please Circle your answer

14 A specific date was set for reviewing my child's progress under this IEP # 49.9 Yes No 40.0

15 The method of checking my child's progress on the IEP included
how it would be checked 45.6 Yes No 32.1
when it would be checked 42.8 Yes No 34.5
who would be responsible for making sure it's done 42.9 Yes No 31.5

16 Some regular class placements for my child were considered during the IEP meeting 45.7 Yes No 33.7

17 Every attempt was made by educators to provide services for as much time as possible in a regular classroom # 49.3 Yes No 37.5

18 A completed copy of the IEP was
made available to me to look at 64.4 Yes No 7.3
made available to me to keep 58.3 Yes No 30.2

19 The IEP for my child was completed before the meeting with me # 51.9 Yes No 28.6

What Were Your Feelings About the Following:

20 Educators presented information during the IEP meeting in understandable language 79.7 Yes No 7.1

21 I was given the opportunity to ask questions about points I didn't understand regarding the IEP # 82.9 Yes No 9.4

22 I was encouraged to contribute significant information to my child's IEP 69.8 Yes No 16.2

23 The IEP that was developed seemed to fit my child's needs 70.2 Yes No 14.0

24 Educators provided information that helped me understand the IEP process 63.0 Yes No 22.7

25 I felt like a fully participating member with the educators during the planning of the IEP 59.4 Yes No 26.0

Please Circle your answer

26 The school which my child attends has a program for preparing parents to participate in the IEP process 36.2 Yes No 51.2

27 I refused to consent to the IEP 5.2 Yes No 76.5

28 I was given specific information on how to appeal the program assignment decisions in the IEP # 34.0 Yes No 45.1

29 I was asked to assume costs connected to services in my child's IEP 5.2 Yes No 77.9

30 I am hopeful that the IEP for my child will improve next year 64.0 Yes No 11.0

Other comments:
Please feel free to give us any additional comments about your IEP experiences ______________________

____

____

____

____

Insert the completed form in envelope provided
Your 15¢ stamp saves us 20¢

National Committee for
Citizens in Education (NCCE)
Suite 410, Wilde Lake Village Green
Columbia, Maryland 21044

Return as soon as possible,
but no later than July 1, 1979

Your copy

A PARENT-CITIZEN SURVEY

Checking Your Child's Progress In Special Education Programs

ATTACHMENT A

lic Law 94-142 (The Education for All Handicapped dren Act of 1975) is a federal law which provides for e and appropriate public education for all handicap- children regardless of the degree or type of handicap. law also requires that a written educational ram (IEP) be developed for each child to meet his/ unique educational needs.

questionnaire is designed to find out about the nts views concerning one aspect of this law—the vidual Educational Plan (IEP). We value the amount me and help you are about to give. Keep in mind that help could improve services for children ughout the country. As one example we plan to pro- a handbook for parents on how to participate more essfully in the IEP process.

ool Building ______________ ______________

ool System ______________________________

ent's Name ______________________________

dress ______________________________
Street City State Zip

ld's Age ___ Sex M ___ F ___
at is your child's primary handicapping condition?

____

our child in a public school? Yes ___ No ___
O what type of school? i.e. parochial private state

____

ur phone number (would be held confidential) could helpful to us if we want to follow up

____
ea Code Number

ase answer the following questions after you have attended meeting at which your child's IEP was developed for the ing school year

Please Circle your answer

1 The IEP meeting was held within 30 days following evaluation of my child. If NO, please check when the IEP meeting was held following the evaluation. 59.1 Yes No 39.9

6.0	2.9	1.7
2 mos. later	3 mos. later	4 mos. later
0.9	5.5	6.0
5 mos. later	6 mos. later	never

2 The information from my child's evaluation before the IEP was fair and useful for planning a program for my child. 79.5 Yes No 11.3

3 The following were present at the IEP meeting

My child	17.9 Yes No 60.2
Child's teacher	77.9 Yes No 9.7
School representative (other than child's teacher)	66.9 Yes No 13.9
Parent or Guardian	83.2 Yes No 3.2

Other ______________________________

4 The IEP for my child contained the following items

•annual goals	76.1 Yes No 5.7
•short-term objectives	73.2 Yes No 11.6
•specific service(s) to be provided	70.5 Yes No 16.2
•present level of performance	75.7 Yes No 5.9
•date services were to begin	62.2 Yes No 15.5
•ways to check my child's progress *	62.0 Yes No 19.3
•special materials equipment or media	51.2 Yes No 29.7
•percentage (%) of time in regular class placement	59.5 Yes No 24.2
•place for me to indicate my approval	77.1 Yes No 7.0
•educators informed me of how the IEP was to be developed and what would be in it	65.6 Yes No 19.4

Please Circle your answer

5 The description of my child's present educational performance in the IEP included information in all four of these areas

•self-help skills (personal maintenance)	66.1 Yes No 18
•academic skills (reading math etc.)	79.8 Yes No 11
•social behavior (how s/he gets along with others etc.)	67.1 Yes No 15
•physical skills (coordination running etc.)	58.2 Yes No 22

6 There were major areas of educational needs for my child which were ignored during the IEP meeting. 14.5 Yes No 64

7 The short-term objectives are written as specific steps my child will achieve in the next three months or more. 55.5 Yes No 21

8 The short-term objectives did seem closely related to the annual goal(s). 63.6 Yes No 11.

9 The annual goal(s) in the IEP did not fully meet the educational needs of my child. * 44.9 Yes No 38

SERVICES

10 The IEP clearly stated what specific service(s) my child would be receiving. 65.5 Yes No 15

11 The dates for the beginning of services for my child were quite clear. 60 Yes No [illegible]

12 I know when the IEP services will end for my child. * 36.5 Yes No 43

13 The service(s) for my child in the IEP was determined by what was available rather than what was needed (for example if a certain service was known to be needed but the final decision was made based on what the school district currently had). 37.3 Yes No 42

(continued)

CHART I: MAJOR PROBLEM AREAS IN MOST STATES

		# of States Cited for Corrective Action (& DC)
I.	Individualized Education Plans (IEP's)	48
1.	The SEA assures an IEP for each handicapped child served by a public agency	20
2.	The SEA assures an IEP for each child referred/placed in a private facility by a public agency	20
3.	The IEP is in effect prior to provision of services.	18
4.	Participants in the IEP meeting include a representative of the public agency, the child's teacher and parents, the child (if appropriate), evaluation personnel, and others necessary.	36
5.	Parent participation includes timely notification, mutually convenient time and place for meeting, and records of attempts to involve parents.	30
6.	The IEP contents are complete and contain present performance level, goals and objectives, special education and related services to be provided, extent of participation in regular education programs, start and legnth of services, evaluation criteria and procedures	34

Chart I **Page 2**

	# of States Cited for Corrective Action (& DC)
II. Procedural Safeguards	49
1. All relevant state agencies have procedures consistent with SEA guidelines	22
2. Procedures have been implemented to assure: opportunity to examine records; right to an independent evaluation and due process hearing; prior notice and parent consent for evaluation and all placement changes; right to an impartial hearing, to an appeal, and to civil action; adherance to timelines; agreement on child's status during proceedings; and availability of surrogate parents.	49
III. Confidentiality	49
1. Procedures have been implemented to cover: • notice to parents • access rights • record of access • list of types and location of information • fees • amendment of records at parent request • opportunity for hearing • parent consent to release information • safeguards	

Chart I

Page 3

	# of States Cited for Corrective Action (& DC)
• destruction of records	
• children's rights	
• enforcement	48
2. All relevant state agencies have implemented procedures consistent with state guidelines.	20

CHART II: PL 94-142: MONITORING SEA PERFORMANCE (from Program Administrative Reviews conducted by the Bureau of Education for the Handicapped 1977-1980)

x = Corrective Action Required

DATE	STATE	INDIVIDUAL EDUCATIONAL PLAN (IEP)							PROCEDURAL SAFEGUARDS		CONFIDENTIALITY		(MONTHS)
		SEA Assures Public Agency	SEA Assures Private Agency	In Effect Prior to Services	Held Within 30 Days	Proper Partici-pation	Proper Parent Notifi-cation	Contents Complete	State Agencies Consistent	Rights Assured	Procedures in Place	State Agencies Consistent	Time Lapse Between PAR & Final Report
2/79	ALABAMA					x	x	x	x	x	x		2
5/80	ALASKA					x	x	x	x	x	x		6 6
12/77	ARIZONA		x			x	x	x		x	x	x	1
1/79	ARKANSAS			x		x		x	x	x	x		1
1/78	CALIFORNIA					x		x		x	x	x	1
4/78	COLORADO					x		x		x	x		3
2/80	CONNECTICUT	x				x	x	x		x	x		3
4/78	DELAWARE							x		x	x		0
4/78	DISTRICT OF COLUMBIA					x	x		x	x	x		1 4
3/78	FLORIDA	x						x	x	x	x	x	3
4/79	GEORGIA			x		x	x	x	x	x	x		1
5/78	HAWAII	x	x	x	x	x	x	x	x	x	x	x	1 5
4/79	IDAHO	x				x	x	x	x	x	x	x	12
6/78	ILLINOIS		x	x			x			x	x	x	7 7
8/78	INDIANA						x			x	x	x	8
10/79	IOWA	x	x	x	x	x	x	x		x	x		1 8
6/79	KANSAS	x				x		x		x	x	x	2
11/77	KENTUCKY	x				x				x	x		0
3/79	LOUISIANA	x				x	x	x	x	x	x		3
6/79	MAINE				x	x				x	x		2
4/77	MASSACHUSETTS	(conducted before PL 94-142 was to take effect)									x		6
4/79	MARYLAND	x		x	x	x	x			x	x		0
4/79	MICHIGAN	x	x			x		x		x	x		12
1/79	MINNESOTA					x		x		x	x		8

CHART II: PL 94-142: MONITORING SEA PERFORMANCE (from Program Administrative Reviews conducted by the Bureau of Education for the Handicapped 1977-1980)

x = Corrective Action Required

DATE	STATE	INDIVIDUAL EDUCATIONAL PLAN (IEP)							PROCEDURAL SAFEGUARDS		CONFIDENTIALITY		(MONTHS)
		SEA Assures Public Agency	SEA Assures Private Agency	In Effect Prior to Services	Held Within 30 Days	Proper Partici-pation	Proper Parent Notifi-cation	Contents Complete	State Agencies Consistent	Rights Assured	Procedures in Place	State Agencies Consistent	Time Lapse Between PAR & Final Report
3/79	MISSISSIPPI		x			x	x	x		x	x		3
3/79	MISSOURI						x	x	x	x	x	x	3
7/79	MONTANA		x				x	x		x	x		3
7/79	NEBRASKA			x	x		x		x	x	x	x	3
6/79	NEVADA	x	x	x		x			x	x	x	x	6
3/78	NEW HAMPSHIRE		x	x		x	x	x	x	x	x	x	3
10/79	NEW JERSEY		x	x		x	x		x	x	x		5
11/79	NEW YORK	x	x	x		x	x	x	x	x	x	x	6
1/78	NORTH CAROLINA		x	x					x	x	x	x	3
8/78	NORTH DAKOTA	x		x		x		x		x	x		3
4/79	OHIO					x		x	x	x	x		4
3/79	OKLAHOMA		x	x		x	x	x		x	x		1
4/79	OREGON	x	x			x	x	x		x	x		4
7/79	PENNSYLVANIA								x	x	x	x	2
7/79	RHODE ISLAND				x	x	x	x		x	x	x	2
7/78	SOUTH CAROLINA		x			x		x		x	x	x	2
2/78	SOUTH DAKOTA		x			x	x			x	x		2
6/79	TENNESSEE			x		x	x	x	x	x	x	x	1
5/78	TEXAS	x	x	x			x	x		x	x		3 4
2/78	UTAH	x				x	x			x	x	x	3
4/79	VERMONT		x				x	x		x			3
1/78	VIRGINIA	x		x	x		x	x	x	x	x		2
4/78	WASHINGTON	x	x			x	x	x	x	x	x		
2/79	WEST VIRGINIA								x	x	x		1

CHART II: PL 94-142: MONITORING SEA PERFORMANCE (from Program Administrative Reviews conducted by the Bureau of Education for the Handicapped 1977-1980)

x = Corrective Action Required

DATE	STATE	INDIVIDUAL EDUCATIONAL PLAN (IEP)							PROCEDURAL SAFEGUARDS		CONFIDENTIALITY		(MONTHS)
		SEA Assures Public Agency	SEA Assures Private Agency	In Effect Prior to Services	Held Within 30 Days	Proper Partici-pation	Proper Parent Notifi-cation	Contents Complete	State Agencies Consistent	Rights Assured	Procedures in Place	State Agencies Consistent	Time Lapse Between PAR & Final Report
8/78	WISCONSIN	x		x	x	x		x		x	x		5 5
7/78	WYOMING	x	x			x	x			x	x		4
	TOTAL	20	20	18	8	36	31	34	22	49	49	19	avg. 3.6

CHART III: PL 94-142: MONITORING SEA PERFORMANCE--The Persistence of Problems in States with 2 PAR's

DATE	STATE	INDIVIDUAL EDUCATIONAL PLAN (IEP)					PROCEDURAL SAFEGUARDS		CONFIDENTIALITY			
		Assurance	Prior to Services	All Participants	Parent Participation	Contents	State Agencies	LEA's	Notice	Access Records	List of Records	Destruction of Records
3/78	ALASKA			x	x	x	x	x	x	x		x
10/79				x		x		x		x	x	
2/78	D.C.	x		x	x		na	x	x	x		x
4/80		not mentioned					na	x	not mentioned			
4/78	HAWAII	x						x		x		x
2/80		x	x	x	x	x		x		x	x	
11/77	ILLINOIS	x	x	x		x	x	x	x	x		
11/79		x	x	x			x	x		x		
3/78	NEW HAMPSHIRE			x	x	x	x	x	x			x
1/80		x	x	x	x	x	x	x	x	x		x
3/78	NEW YORK	x					x	x	x	(no agency met all requirements)		
11/79		x	x	x	x	x	x	x	x		x	x
2/78	TEXAS	x	x	x	x		x	x	x	x	x	x
2/80		x	x	x	x	x	x	x		x	x	x
1/78	VIRGINIA	x	x				x	x	x			x
5/80			x	x	x	x	x	x	not mentioned			
8/78	WISCONSIN	x					x	x	x	x	x	x
12/79			x	x		x	x	x	x	x	x	x
5/78	CONNECTICUT	x		x	x	x	x	x	(local policies inadequate)			x
2/80				x	x	x	x	x	x	x		
1/78	IOWA	x				x	x	x	x			x
10/79		x	x	x	x	x	x	x		x	x	x

OCT 23 1980

MAX BAUCUS
Montana

1107 Dirksen Office Building
Washington, D.C. 20510
(202) 224-2651

Montana Toll Free Number
1-800-332-6106

United States Senate
WASHINGTON, D.C. 20510

COMMITTEE ON FINANCE
Chairman, Subcommittee on the Oversight of the Internal Revenue Service

COMMITTEE ON JUDICIARY
Chairman, Subcommittee on Limitations on Contracted and Delegated Authority

SELECT COMMITTEE ON SMALL BUSINESS

October 22, 1980

Honorable Jennings Randolph
Chairman
Senate Subcommittee on the
Handicapped
Room 10B Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed copies of testimony from two constituents of mine regarding Public Law 94-142, the Education for All Handicapped Children Act of 1975.

Both Mrs. Dick and Mrs. Zion requested that their comments be included in your Subcommittee's hearing record on this subject, and I hope you will find it possible to do so.

Thank you for your attention to this request. I would appreciate your letting me know if you have been able to include these remarks in the hearing record.

With best personal regards, I am

10-23-80

Sincerely,

Max S Baucus

Enclosure

LAW OFFICES
ZION, UDA, REYNOLDS & PERLMUTTER
SUITE 201, POWER BLOCK
P. O. BOX 1255
HELENA, MONTANA 59601

JAMES W. ZION
ROSEMARY B. ZION
JOAN A. UDA
JAMES P. REYNOLDS
STEVEN J. PERLMUTTER

TELEPHONE
(406) 442-3261

October 17, 1980

Senate Handicapped Subcommittee
House Subcommittee on Select Education
c/o Sen. Max Baucus
1107 Dirksen Office Building
Washington, D. C. 20510

Dear Members of the Committee:

I am an attorney practicing law in Helena, Montana. Although I am now in private practice, I did spend a year as the attorney for Montana's Developmental Disabilities/ Montana Advocacy Program, the protection and advocacy organization for developmentally handicapped persons in Montana. In this position , as well as in my subsequent private practice, I have represented families of many children in need of special education. I have also testified concerning the Montana Special Education State Plan at public hearings.

My experience in attempting to employ the Education of the Handicapped Act, P.L. 94-142, to obtain needed special education services for handicapped children has caused me to have a great concern and even scepticism about the efficacy of this law as it is presently administered. I have become particularly sceptical about the extent to which the Office of Special Education (formerly Bureau of Education for the Handicapped) of the Department of Education is prepared to require that a state adhere to the substantive requirements of that law, or even to interpret the law as having any substantive requirements.

There has been a lot of criticism of the regulations implementing the Education of the Handicapped Act for the reports, written programs and other paper documentation which the regulations require. I can understand the frustration of committed special education professionals who feel they spend too much time filling out forms. My frustration is that as long as the forms and documents required by the regulations are filled out, the Office of Special Education appears totally unwilling to address the question of program substance. Nor does the office require the State Educational Agency to address the question of program substance. What this means in operation is that on the whole, as long as a local educational agency keeps on top of its paperwork, it can do what it wants in regard to educational program, even if what it wants makes no educational sense.

Comments to House and Senate subcommittees
page 2

During the past year, I have been involved in a lengthy piece of litigation with the Montana Office of Public Instruction, our State Educational Agency under P.L. 94-142, regarding the responsibility of that agency for the difficulties which a profoundly handicapped child encountered in obtaining an appropriate education in her home community. Numerous problems had arisen for the child and her foster family which we felt were caused by the total reluctance of the school to try to deal with her, the refusal of the school to seek appropriate training for its special educational staff, the refusal of the school district to make use of itinerant resources that were available to it. As a result, the child was threatened with removal from the school, removal from her home, and relocation in another community over 60 miles away on the other side of a mountain range. The foster mother sought the assistance of the state agency but was only informed of her right to legally contest the actions of the school district in a "due process hearing." The state agency approved the out-of-district placement request on the basis that the papers were in order, maintaining that they need not, indeed could not, consider the rightness of the placement.

I became involved in the situation when it was already in litigation. The child, as required by law, was still in the community. The school's efforts toward providing her even an interim education were grossly inadequate. I sought the assistance of the state educational agency. The agency agreed with me that the school was not even filling out the forms correctly, but would not meet with me and the school district to address the more fundamental issue of whether the education being provided was as good as it could be. They told me that they could assist the school but they could not assist me, or the child I represented. Even if they agreed with me that the child's program was not what she needed and not what the school was capable of delivering, they could not, they told me, do anything about that. That was a "due process" issue. In vain did I argue that my clients wanted help, not more litigation.

At about this time, I had an opportunity to come to Washington on another matter. So, I decided to discuss the entire situation with the legal and evaluative staff of the Office of Special Education. I had several specific questions. Didn't the staff who worked with handicapped children have to be qualified? Didn't this mean they had to have some training of some sort in dealing with the kinds of children they were teaching? Wasn't the state educational agency responsible for assuring that special education staff were qualified? Wasn't the state educational agency responsible for assuring that a handicapped child's education is appropriate? Didn't this mean they should at least be willing to look at the question of whether the program was any good, or any good for the particular child? Shouldn't it be a concern of the state educational agency as to whether school districts were willing to utilize regular schools and regular classrooms for handicapped children when possible (I was also having a very difficult time getting the state educational agency to require schools to provide special services in regular classrooms to learning disabled children) ?

What I learned told me a great deal more about the orientation of the Office of Special Education than it did about education of handicapped children. For example, Websters Dictionary notwithstanding, according to the Office of Special Education, a special education staff person is "qualified" to teach a handicapped child as long as th state educational agency says he or she is qualified, regardless of whether this person has any training or experience in educating that kind of child. "Qualified" is what ever satisfies the SEA. In the case of special education teachers in Montana, qualified means "certified" even if the teacher has had no course and no on the job training in working with the kind of children she is supposed to be teaching (for example, the child I was representing was profoundly retarded. Her "certified" special education teacher had a professional and educational background in teaching the learning disabled). In the case of special education aides, "qualified" meant alive and breathing. There was and is no educational, experiential, or in-service training requirement at all for special education aides. The state educational agency is only "responsible" for assuring that special education staff are "qualified" not that they have any training, experience or ability for their job.

Likewise, a individual educational program is "appropriate" if it conforms to the individual educational program plan, and if the plan has all the technical parts specified by the regulations. It is "appropriate" whether or not it makes any sense for the particular handicapped child. The state educational agency is "responsible " only for making sure that the individual educational program is "appropriate." It is not responsible for considering whether the plan makes any sense.

The "least restrictive alternative" in which a child can be educated is the one indicated on the individual educational program plan. It is not the least restrictive setting in which the child could actually be effectively educated. The state educational agency is only responsible for assuring that a child is educated in the "least restrictive alternative" , not for assuring that the child is in as normal and unrestrictive an educational environment as could reasonably be provided. Also, it appears that the least restrictive alternative means the least restrictive alternative that a school is willing to provide.

The entire interview went like that. Absolutely the only thing that I could determine that a state educational agency had to make sure everybody does is to fill out the forms correctly. I would like to stress that I was speaking with a staff attorney and a member of the compliance staff for our region. The interview had been scheduled in advance. These answers I was getting were not accidental or the product of surprise. They were the agency's position.

Another area I discussed with the agency staff was the whole due process hearing. It is my experience that most families of handicapped children do not want to have to challenge the school their child attends in an adversary proceeding. They want some help from the state educational agency or somebody in mediating their disagreements with the school district. They want somebody knowledgeable about special education and about the special education laws to assist them in working the situation out. What they get is the "right to a hearing" before, in the case of Montana, a county superintendent of schools, who has spent two days learning how to conduct hearings and two hours (I learned this in a deposition) learning about the education of handicapped children. Then they can appeal to an attorney from Helena who also has no background in the education of handicapped children. Then they can go to Federal District Court. They don't want to go to court. They want some help from somebody who understands how the education of the handicapped laws are supposed to function and is willing to try to make them work.

The people I spoke with at the Office of Special Education admitted that the entire "due process hearing" procedure absolutely depended on having a knowledgeable professional, familiar with education of the handicapped, conducting the hearing. They also admitted that they realized that the typical hearing officer does not meet this criterion. They did not seem to realize that such a defect in the fundamental assumptions underlying their due process system could compromise its effectiveness.

I next went to the Office of Civil Rights of the Department of Education. I learned that the Office of Civil Rights has problems with the Office of Special Education, too. The lawyers and investigators of the Office of Civil Rights often find a violation of #504 of the Rehabilitation act for the same aspect of a special education program that the Office of Special Education says is acceptable. I learned that even the Office of Civil Rights has not figured out how to make the word "qualified" mean qualified when it is applied to special education personnel. What they have done, however, is to determine that if the instructional staff has no training or experience for teaching a particular handicapped child and don't know what they are doing, then they may be "qualified," but they are not able to give an "appropriate" education to the child. It was a relief to finally be talking to someone who recognizes that the special education staff should have some background in what they are doing. But, surely it should not be necessary to stretch logic and language to this point to reach such an obvious conclusion.

This letter is longer than I had intended. However, I feel that it is important that you get the flavor of the way in which the Office of Special Education interprets its responsibilities under the Education of the Handicapped Act. No parent can deal with a system that operates like this. The act does bring some additional money into the special education system. It does provide some guidance and procedures for those local school districts already committed to doing a good job. As presently administered, it does not effectively impact those schools which are resistant to making the changes necessary to educate handicapped children. It creates an elaborate and expensive enforcement structure. But the primary agency charged with enforcement of the act is not willing to require substantive compliance. State educational agencies take their cue from the Office of Special Education.

I am not certain if you should consider new legislation or simply require this federal agency to return to the plain meaning of English words in interpreting its responsibilities. Probably new legislation would be simpler. I leave that to the national advocacy groups which have already reported to you and to your own experience. Based upon my experience, however, some change is imperative.

Sincerely,

Rosemary B. Zion

Oversight hearing 94-142 Oct. 15, 1980

Comments from : Carolyn Lee Dick, parent.

Gentlemen Thank you for giving me this opportunity to address your committe.

I am Carolyn Lee Dick the parent of two children. I should say two teenagers. Both of which are in the 10th grade and 16 yrs. old. One of my children is in need of special education and PL 94-142.

We presently live in Montana, but have lived in California. I have had a view of two different states' educational systems and special education dispensed by both.

This year I has training in 94-142 and 504. I would like to thank you for this opportunity. It has made my role as a parent of a handicapped one that is clear goaled for me. In service to parents is invaluable. I should like to commend the Center of Independent Living, Inc. Disabiltiy Law Resource Center in Berkeley, California for there outstanding work.

There is an area of great concern for me. The stages of grief that a parent or guardian must experience and grow through upon finding out that their child is handicapped. I have heard anger, grief, denial and self punishment from parents who call for assistance with their handicapped child. I feel that this area is omitted from general teaching and the parent is left to deal as best he or she can. In the inservice this subject must be touched on so that a parent will identify their needs and understand the first basic feelings before traveling into 94-142 with this burden upon their shoulders. Teachers and administrators must also become enlighten about this matter. Since a good close working relationship must be a goal between the formentioned parties.

In our state Mr. Joe Luckman of Great Fall, Montana has developed a presentation that is truly informative. I thank him for his insight into the parents of the handicapped.

Now we come to the IEP and it's importance. After reading the hearing book part I from the House of Repr. I shutter to think anyone would make light of it's importance as to count the number of pages in it. It is

2. Carolyn Lee Dick comments:

not the number of pages but rather the contents that is important. Inservice is a matter of knowing how to write this tool. It is just that to a tool, or better yet the heart and soul of 94-142. Without it all one has is identification and only that. I can testify before this committee that my son has gone without an IEP and the education he received was zero. Since he is intellegent and struggling to acheive and wants to be like other students his age many problems have developed and I have seen it most in his behavior in school. Now 3 years down the line the school can see the behavior but NOT the problems that developed the behavior. Had an IEP been in place these 3 years we would not be working with behavior as such but the learning disability. This is one of the reasons for a 50page IEP. Gentlemen, I pray in your wisdom that you will not weaken 94-142 by changing or making light of the IEP. As to address the the matter of financing and cost I can only say WHAT IS THE COST OF A PERSON"S RIGHTS ? The handicapped have been hidden from the public too long and have lived in institutions long enough. If we can put men on the moon surly we can give handicapped persons' their rights. If not maybe walking on the moon was a dream we should have left to dreamers.

As the parent of two children I feel for the education of both. I have not seen that the education of my son has hurt my daughter. No funding or budget cuts have adversly affected her education. But I have seen how zero educational growth has effected my daughter. With both children being the same or nearly the same age, they attend the same school and grade level. One is developing and one is not capable of growth without the IEP for a guide. Once again pointing to the NEED for IEP's for the handicapped student.

Labeling and or divisions of handicapping conditions is another area I feel needs addressing. I am concerned for my child but find while working for all handicapping conditions together benifits my son's education even fuller. The lines TMR , MR, EMR, LD, ect. should not be viewed or addressed so as to post lines within the handicaps education. I site this example: There are some students who weigh 180# some 110# some 100# The weight is not the important issue but the goal of indiviual needs. Putting in the division of lines foggs the issue and insures that miss classification will accure and parents and teachers and administration will learn to identify with only a select few of the handicapping conditions. The condition of handicaps needs to be addressed to NEEDS not labels.

My last issue is due process. Please let me say that I feel that due process is a slap on the wrist to a district on the State. They can afford to go threw due process but can not afford to go for the sanctions of non-compliance. Due process is expensive to parents, may of which are already medically burden. At an inservice training put on by the state these figures were used($2,000.00 to $5,000.00)(Cost to the parent.) That is not a free appropriate education. Then the next problem will be to find a lawyer versed in special education. I do not feel due process is a good working tool for parents in fact quit the opposite.

When non-compliance of a district is noted by the state, a definite time line MUST be given in writting to the district and to the parents who have filed the charges. If in fact 94-142 is a law than it must stand as a law.

I thank you for this time for my comments. Please enter these comments into the formal records.

I would appreciate a copy of the final transcript of these hearings.

Thank you

Sincerely
Carolyn Lee Dick
Carolyn Lee Dick
Oct 10 1980

cc: Max Baucus
Pat Williams
WATCH
BACH
CHIN
UCP Great Falls, Montana

Statement of

THE AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION

Before the

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
SUBCOMMITTEE ON THE HANDICAPPED

OVERSIGHT HEARINGS ON P.L. 94-142
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

Submitted by

Roger P. Kingsley, Ph.D.
Director
Congressional Relations Division

October 1980

Introduction

The American Speech-Language-Hearing Association (ASHA) is pleased to present its views on the Education for All Handicapped Children Act. Public Law 94-142 stands as one of the landmark pieces of legislation concerning equal educational opportunity for all children. More than four years after its enactment and two and one-half years following promulgation of federal regulations, the achievements of P.L. 94-142 are evident in most parts of the country. Approximately four million handicapped children are receiving special education and related services under the Act and almost every state has shown impressive increases in the number of children served. Even during a time of declining school enrollments, many thousands of handicapped children are being identified annually and given the attention and assistance they need in order to fulfill their physical, intellectual, social, and emotional capacity for growth.

These are no small achievements, particularly when one considers the complex intertwining of state laws, local agency procedures, judicial decisions, and federal agency policy regulations and interpretations. Despite these achievements, the goals established by Congress in 1975 to achieve a free and appropriate education for all handicapped children are still a long way from being realized. With governmental and public concern over inflation and balanced budgets, the resources needed to fulfill these goals have been placed in jeopardy. As American consumers, we share in the general concern over economic problems. But we also know that such problems must not be allowed to interfere with the fulfillment of basic rights like equal educational opportunity.

Speech, language, and hearing disorders are commonly found among the very young. Because the ability to communicate effectively is so fundamental to other life activities, any loss or limitation of this ability can be detrimental to individual human development and performance. Children frequently suffer from voice disorders, articulation disorders, stuttering, slow or incomplete development of language skills, and hearing impairment - problems which stem from a variety of causes, but which all require professional evaluation and treatment. A young child whose communicative problems are not properly treated is likely to encounter difficulties in academic learning, interpersonal relationships, and future vocational achievement.

The American Speech-Language-Hearing Association is a scientific and professional society consisting of over 35,000 speech-language pathologists and audiologists. These health and education professionals are concerned with the systems, functions, and processes of normal and abnormal human communication. ASHA Members are qualified to provide services in hospitals, speech and hearing clinics, outpatient rehabilitation centers (such as those run by the National Easter Seal Society and the United Cerebral Palsy Association), skilled nursing facilities, home health agencies, Head Start Programs, Veterans Administration and Department of Defense hospitals, public and private schools, and private practice. Approximately 45 percent of all ASHA Members work in a school setting.

ASHA sets and enforces a three-tiered standards program which is designed to assure high quality educational programs, competent clinical practices, and recognition of qualified professionals. Through the Council on Professional Standards, higher education programs are accredited under procedures recognized and approved by the Department of Education. Clinic programs are likewise evaluated and accredited by a Professional Services Board. In order to qualify for ASHA's Certificate of Clinical Competence (CCC), individuals must have successfully completed strict educational and training requirements. The CCC is awarded to individuals who a) complete a graduate course of study leading to a Master's or Doctoral degree in speech-language pathology, audiology, or speech and hearing science; b) complete 300 hours of a supervised clinical internship; c) pass a national examination administered by the Educational Testing Service; and d) subscribe to ASHA's Code of Ethics. The CCC is recognized by the Medicare and Medicaid programs as evidence of proficiency in dealing with speech, language and hearing disorders.

Public Law 94-142: Purposes, Problems, Progress

The right to a public education for all citizens has evolved into a central principle of the American social system. Yet the fulfillment of this right has not always been possible because of conflicting stands concerning the appropriate domains and mechanisms for carrying out such democratic principles. Long the exclusive domain of the local school district, responsibility for public education has only recently been shared by the states and the federal government. In Brown v. Board of Education (1954) the Supreme Court placed the individual's right to an equal education above the prerogative of any governmental entity to act or fail to act in a manner that would impede that right.

> In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity is a right which must be made available to all on equal terms.

The realization that millions of handicapped children were not being educated on free, equal, and adequate terms led to the gradual extension of the Court's decision to this sector of American society. In several class action suits (Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, E.D. Pa., 1971, and Mills v. Board of Education of the District of Columbia D.D.C., 1972), the Court decided that handicapped children could not be denied a public education and that due process procedures had to be established to guarantee the appropriateness of their academic placement. In the Education of the Handicapped Act (P.L. 91-230) and, most significantly, in passing the Education for All Handicapped Children Act P.L. 94-142) ten years later, Congress recongized that what the Court said in 1954 of children generally was also true of unserved, underserved, and inadequately served handicapped children. At the heart of P.L. 94-142 was the goal to

> Assure that all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children. [Sec. 601(c)]

The 1975 law was remarkable in that it went beyond merely guaranteeing equal educational opportunity. Taking into account the arguments of thousands of interested citizens and group representatives, Congress built into the legislation the concept that educational programs must be structured around the needs and problems of the individual child. Of the estimated eight million handicapped children in the Untied States, fully half were reported to be receiving an inadequate or inappropriate education. The individualized education program (IEP) was designed to remedy this deficiency.

The Act was unique and progressive with respect to its incorporation of concepts that have increased the potential of fulfilling the promise of public education to handicapped children. Congress avoided simple solutions in favor of procedures that would have maximum impact. For instance, integration of the handicapped was recognized as generally desirable but not always proper with respect to benefitting a youngster's educational development. The intent of Congress was to encourage the placement of handicapped students in regular classrooms and schools, and to discourage the segregated placement of students solely on the basis of their handicaps. Nowhere in the law are the terms "integration" or "mainstreaming" used. Instead, the concept of a "least restrictive environment" was developed to support the goal of educating handicapped and nonhandicapped children in a common environment "to the maximum extent appropriate." Handicapped children were to be placed in alternative educational settings "only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." [Sec. 612(5)]

Additionally, Congress recognized the importance of developing IEPs through the cooperation of parents, teachers, and specialists in one or more disability areas. Due process was built into the law and regulations so that parents could participate in the planning and on-going progress of their child's education. Here, Congress recognized the problem of converting the law's objectives into real and appropriate educational programs. School officials could not always be expected to know what was best for the individual child, nor would all of them place the same priorities on special education and related services.

Due process provides not only legal guarantees to handicapped children and their parents, but also the mechanisms by which their rights can be realized. Procedural safeguards are established which include the opportunity to participate in the development of IEPs, the right to file complaints concerning identification, evaluation and placement, and the right to an impartial hearing.

ASHA recognizes the complexity of these aspects of P.L. 94-142. We are aware of the difficulties that have been encountered during the early phases of implementation, and reaffirm our willingness to work with Congress and agencies of the federal and state governments in overcoming these difficulties in an effort to fulfill the law's intent. This organization has, in principle and in practice, been a strong supporter of legislation aimed at guaranteeing appropriate educational opportunities for all handicapped children. In particular, ASHA has endorsed the goal of equal educational opportunity, provisions for state plans and timetables, use of procedural safeguards, due process procedures, and the withholding of funds from noncomplying states and localities. ASHA has stated before, and reasserts now, the belief that responsibility for providing education rests principally with the states. But we have also agreed with the Congress that it is the responsibility of the federal government to assure that federal funds provided to the states for educational purposes are used in the nation's best interest, according to guidelines established to reflect that interest.

In testimony before this Subcommittee, the General Accounting Office has questioned congressional intent with respect to the scope of coverage under this law.[1] The issue was raised as to whether "children with minor impairments" were meant to be included for purposes of special education and related services funding under P.L. 94-142. Our review of the legislative history of this Act and the statutes preceding and leading up to it reveals no intention on the part of Congress to limit coverage to certain groups of handicapped children or to children on the basis of the severity of their impairments.[2]

Congress has, over the years, legislated in a consistent and equitable manner in aiming to assure appropriate education for all handicapped children. Much of the legislative history as expressed in subcommittee hearings, committee reports, floor statements and statutory language, does not refer to particular groups of handicapped children. Rather, these statements and documents deal with the general problem of educating handicapped children regardless of the specific condition or its degree of severity. In references to handicapped children throughout P.L. 94-142 the word "all" is consistently used. There is never any implication that specific handicapping conditions or the services necessary to deal with them are to be covered to a greater or lesser degree. Similarly, the legislative history leading up to the enactment of P.L. 94-142 carries with it no suggestion that handicapped populations are to be treated differently.

Federal interest in assisting the states through grants, and in providing for research and training assistance in special education expanded greatly during the 1960s. Public Law 88-164 authorized the Commissioner of Education to make grants available to the states for special education programs covering:

> mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education. [P.L. 88-164, Section 301]

Public Law 91-230, The Education of the Handicapped Act, carried forward this definition listing specific groups of handicapped children, including the speech impaired.

The Education for All Handicapped Children Act of 1975 was, of course, the culmination of Congress' ever-increasing commitment to the education of handicapped children throughout the nation. During public hearings, subcommittee, committee and floor deliberations, it is hard to discover any indication that Congress was interested in writing a limited law -- one that would include only children with certain conditions. A statement by Senator Harrison A. Williams, Jr., Chairman of the [then] Committee on Labor and Public Welfare typifies the broad interest of Congress:

> These provisions [of S.6]...serve to implement the law of the land -- the law which proclaims that all citizens have a right to equal protection of the laws. And it is Congress' duty to enforce this law.
> Until every child in this nation is afforded the opportunity for a decent education, I beleive that we will have failed to uphold our duties under the Constitution to assure that the law is enforced.

[Committee on Labor and Public Welfare, Hearings before the Subcommittee on the Handicapped on S.6, April 1975]

While the GAO acknowledges that Congress has included speech impaired in its definition of handicapped children, the agency questions whether this is provided speech therapy services today compared with 14 years ago."[3] We find this a rather strange line of reasoning since the nature of speech impairments has not changed during this time period. As with other handicapping conditions, more children are identified now as compared to fourteen years ago because there are now more and stronger state and federal laws requiring the identification of handicapped children. Nevertheless, it is significant that since the implementation of P.L. 94-142 in 1977, there has been a 6.4 percent reduction in the speech-impaired child count - 122,506 children. Also, there are indications that while the total number of speech-impaired children in the schools is declining, the number of children with severe speech impairments is rising.[4]

The GAO has apparently focused its attention on children with speech impairments because they form the largest single disability category and generate the highest amount of federal funds under P.L. 94-142. Obviously, however, the GAO's concern over the inclusion of children with less than "severe" impairments and of services specifically defined under "related services" applies to many handicapping conditions and professional services besides speech handicaps and speech-language pathology. With respect to speech and other handicapping conditions, a review of legislative history makes clear Congress' intent to make federal assistance available to state and local education agencies for programs to provide appropriate education to all children with such conditions.

The GAO has also questioned the clarity of the law and regulations with respect to what constitutes special education and related services. The Bureau of Education for the Handicapped (now the Office of Special

Education)* has, we believe, correctly interpreted congressional intent by leaving to the states the responsiblity for setting standards to determine what is special education. All states regard speech-language pathology as special education.[5]

The GAO has reported that intervention sessions for speech-impaired children are much shorter than sessions for children with other kinds of handicaps. They have also correctly reported that minimum and maximum caseloads in many states are very high.[6] Obviously, these high caseloads are a direct cause of short intervention sessions and a frequent lack of attention to the individual speech-impaired child. These are problems that greatly concern us and they are addressed more fully in later sections of this statement.

Since implementation of P.L. 94-142 began several years ago, ASHA has surveyed its Members in the schools in order to learn their views on how the Act has been working at the local level.

These speech and hearing professionals feel most positively about the increased level of parental involvement in their children's overall schooling. They believe that communication has been facilitated among the parties involved in developing IEPs, including parents, teachers, and disability specialists. General improvements and measures in the organization and delivery of services were also reported. As a result of the Act, severely handicapped children have been afforded an opportunity to attend public schools, and there is more appropriate placement of those children who require special education. Conversely, children with minor, transitory problems that are outgrown after a brief period, are properly excluded from handicapped education programs. Services also have been improved through greater use of multidisciplinary teams. In this way, a variety of educational and health professionals can combine their expertise to serve children with multiple handicaps by recognizing how specific disabilities affect various physical and cognitive functions.

---

*The Bureau of Education for the Handicapped became the Office of Special Education when the Department of Education was inaugurated on May 4, 1980. Hereafter, all references to the agency will be OSE.

Serious problems remain, however, in the movement toward achieving appropriate educational opportunities and settings for all handicapped children. According to many ASHA Members, inadequate funding is a critical reason why implementation of the Act is proving difficult. The law requires compliance according to a set timetable, but the resources required for such compliance have not been allocated in a corresponding manner. There is also general consensus in the field that classloads and caseloads remain too high. Insufficient levels of personnel result in children receiving inadequate or inappropriate special education and related services, and in many cases not receiving any assistance at all. There is also a great deal of concern that many children with language, speech, and hearing impairments are not being counted as handicapped. Sometimes the reason is that parents are uninformed about the legal rights guaranteed to them and their children. In many instances school officials are at fault because they are making little if any effort to see that parents are made aware of P.L. 94-142, or that the provisions of the law are properly implemented. A particularly serious problem exists among hearing impaired children because professional services and aids to facilitate learning are being limited by severe personnel shortages as well as a failure by many local education officials to implement various provisions of the law.

There are numerous issues concerning problems with the implementation of P.L. 94-142 and how the interests of handicapped students can be best served. Here, we will briefly touch on some of these issues, then turn in greater detail to problems of public funding, appropriate inclusion of handicapped children, personnel shortages, and audiologic services.

Early Education

Past research has demonstrated that early recognition and treatment of handicapping conditions can significantly reduce the number and severity of handicaps in later life. For instance, one study showed that when second graders with similar speech articulation problems were placed in intervention and non-intervention groups, the rate of improvement in articulation was nearly four times as great for the group of children receiving professional speech-language pathology services.[7] Efforts to reduce the limiting effects that physical and cognitive impairments have on major life functions permit children to more fully benefit from the educational process.

While it is true that some minor speech and language problems diminish with time, it is also evident that early delays in the normal learning process due to such problems can result in subsequent learning disabilities.

Hence, whether the young child has a speech or language problem that is minor, moderate or severe, it is most beneficial to provide early diagnosis and assistance in order to establish the strongest possible foundation for the child's schooling. There is also a public benefit to be derived from this early intervention strategy. Since the provision of special education and related services to infants and preschool children should reduce the number and severity of handicapping conditions, fewer public funds will have to be allocated for these children during their later elementary and secondary school education.

Because early intervention is so critical to the long range development of children, ASHA recommends:

- that federal, state, and local education agencies give higher priority to the special education and related services needs of very young children
- that the Congress reaffirm its support of the Preschool Incentive Grant Program by funding that Program at the full authorized level
- that serious consideration be given to covering children ages 0 to 3 under the Act.

Continuous Education

Related to the issue of when special education and related services should begin is the question of whether an appropriate education sometimes requires services that extend beyond the normal academic year. In the recently decided case of Armstrong v. Kline (D ED Pa., 1979), the plaintiffs argued successfully that extensive interruptions in schooling can be damaging to the educational progress of handicapped children. Cessation of a handicapped child's educational program during the summer vacation months in particular can result in regression due to the loss of skills that are a key to the child's overall progress. The court's decision recognized that a sustained program of special education and related services may be necessary to achieve the objectives outlined in the child's IEP and in this way guarantee an appropriate education. Through this decision, the court has reaffirmed Congressional intent in enacting an education for the handicapped law which would establish programs and procedures to insure that children could develop as much self-sufficiency as their innate abilities permit. ASHA supports the concept that the extent of a handicapped child's education should be based on his or her individual needs and not be tied to an impersonal academic calendar.

The Link Between Special Education and Related Services

The federal regulations make clear that special education includes:

> speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards. [45 CFR §121a.14]

Most states have dealt appropriately with this provision as far as speech-language pathology services and funding are concerned. Speech-language pathologists employed in the schools provide assessments of children to determine the existence of speech and language impairments. Where such impairments are discovered, these same professionals provide diagnostic and rehabilitative services for the handicapped children. In numerous ways - for instance, by helping youngsters with articulation disorders to learn proper production of speech sound, by assisting stutterers to cope with their disorder and to increase the amount of fluent speech - speech-language pathologists fulfill the role of special educator.

The definition of related services in P.L. 94-124 as "supportive services . . . as may be required to assist a handicapped child to benefit from special education . . ." [Sec. 602(4) 89, Stat. 775; 45 CFR §121a.13(a)] is different from that part of Section 504 of the Rehabilitation Act of 1973 which deals with public education:

> For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (1) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met . . . [45 CFR §84.33(b)(1)]

In this same light it is worthwhile to note that a recent court decision confirmed the preeminent nature of Section 504 with respect to state education of the handicapped responsiblity. A federal judge in New Mexico Association for Retarded Citizens v. The State of New Mexico (U.S.D.C. NM, 1980) agreed with the plaintiffs that the state and its local school districts had "failed to provide an adequate and appropriate level of support services, such as speech and physical therapy . . . failed to establish and enforce adequate and appropriate standards of procedures necessary to insure that those in the class are receiving the education to which they are entitled." Since New Mexico is a recipient of federal financial assistance, it is obligated to comply with the mandate of Section 504 even though the state chooses not to participate in P.L. 94-142 program funding.

We feel that the existence of handicapping conditions and the need to provide those services necessary for the child to overcome or cope with his disabilities must be the overriding considerations in the determination of who qualifies for such services and what services qualify for public funding. Section 504 makes clear that related aids and services must be provided in order to insure that no individual is denied (intentionally or unintentionally) the right to participate fully in public education. We support the concept that related services are a necessary component of a free and appropriate education which should be promoted in order to enhance a handicapped child's special or regular education.

Excessive Paperwork

The massive additional administrative responsiblities imposed on individual special educators and related service professionals by the P.L. 94-142 procedural requirements pose a serious problem. Reports from speech-language pathologists in various states indicate that an average of six to ten hours per week are spent completing paperwork. Some professionals report having had to complete up to 30 pages of forms in order to place a speech impaired child in a special education program.

An analysis of this situation reveals that much of the paperwork results from state and local education agency requirements that vastly exceed the federal regulations. Speech-language pathologists and audiologists in many of the states have required caseloads that are way too high (e.g., 70-90 handicapped children; see also Appendix A). Completing paperwork for this many children can only result in a further reduction of already insufficient time to provide actual services.

ASHA recommends:

- that OSE work closely with the states in developing procedures that require less paperwork while still assuring that data collection requirements are met and that the rights of handicapped children are preserved.
- that OSE review state policies regarding caseload requirements for various special education and related service professionals. The states should be aided in changing mandatory caseload requirements so that services are based on the needs of children rather than on outdated state regulations or administrative mandates.

Funding

To be in compliance with the mandate of the law and to be eligible for federal funding, state and local education agencies were to have made available by September 1, 1978, a free and appropriate education for all handicapped children. By beginning with five percent federal funding in fiscal year 1978 and working up to 40 percent in 1982, the state and local education agencies are most heavily burdened at the outset in trying to meet their legal mandate.

For the states to meet the challenge of education for the handicapped under these circumstances, the states and local districts must come up with huge expenditures for additional personnel, facilities, materials and equipment. Yet the Congressional Budget Office reported that educational expenditures will exceed state and local revenue raising ability through the remainder of the decade. The authorized level of federal spending in fiscal year 1980 was $1.2 billion, in 1981 it is $2.1 billion, and in 1982 it is $3.1 billion. Yet the amounts appropriated by the Congress fall way below these levels. For the 1981-1982 school year the Administration intends to bypass the 40 percent level of federal fiscal responsibility originally intended by Congress and to continue its policy of funding 12 percent of the average per pupil expenditure for grants to the states. When inflation is taken into account along with the larger number of handicapped students identified under P.L. 94-142, the recommended fiscal 1981 appropriation of $1.1 billion amounts to an erosion of the per child allotment. Most severely hurt are the preschool incentive grant program, the deaf-blind centers, and projects for the severely handicapped. The funding recommendation for special education personnel development - a crucial area for support if the program is to be effectively carried forward - is barely at the level appropriated two years ago. While the $58 million in appropriations for 1981 would be a slight increase over the amount being spent this year, it still falls far short of the $90 million authorized by Congress for personnel development. A 1978 ASHA report described some of the detrimental effects of inadequate funding on the Act's implementation:[8]

1. Some states and local education agencies are developing program eligibility standards that eliminate from special education programs students who previously were eligible. This will reduce the number of handicapped children who need to be served, reduce the number of personnel and facilities needed to serve them and reduce costs for providing special education.

2. Specialists responsible for determining a handicapped child's appropriate education are being forced to include in the child's Individualized Education Program only those services that the school districts can provide rather than what the child needs. Because the school district is responsible for providing at no cost to the parent only the special education and related services included in the Individualized Education Program, school districts are able to minimize costs by including minimal services in the IEP.

3. School districts are not able to employ sufficient numbers of personnel to increase the number of handicapped children served. In some instances, existing personnel have been required to increase the number of children they serve so the state and local education agency can say they are serving all handicapped children. Little consideration is given to the appropriateness of the services provided.

A study conducted by ASHA showed that school districts did not come close to fulfilling the requirement that all handicapped children ages five to eighteen be enrolled in programs designed to fit their special needs. Of 133 school districts surveyed, 90 districts reported a total of 53,436 speech-impaired children who needed special education and related services but were not receiving the needed services.[9] Speech and language-impaired children form the largest disability category among elementary and secondary school age children and generate approximately 30 percent of the P.L. 94-142 funds nationwide. Yet the ASHA survey found that fewer than half of the speech, language, and hearing programs providing services for handicapped children were receiving any P.L. 94-142 funds. The law does not include any provision that a proportionate amount of funds generated by any disability category be used to increase or improve services to children in that category.

Recommendations

ASHA recommends that Congress consider a number of policies that would help to ensure the effective implementation of P.L. 94-142:

- Federal appropriations should allow, at the very minimum, for funding based on the formula percentages written into the law. We hope the members of this Subcommittee will urge their colleagues on the Appropriations Committee to provide for adequate funding of P.L. 94-142.
- Provisions should be made for state and local education agencies to count for funding purposes all handicapped children who have been identified as needing special education and related services, whether they are actually enrolled in such programs at the time of the child count or not. Tied to this is the need to modify the definition of "unserved" to include those children who are enrolled in school but who are not receiving the special education and related services that they require. These changes would enhance the capacity of SEA's and LEA's to employ specialists to serve children on waiting lists.

Identifying, Counting, and Evaluating Handicapped Children

Identification

The Office of Special Education estimates that by the 1978 - 1979 academic year 70 percent of the nation's handicapped student population were receiving an appropriate education under P.L. 94-142. This is progress considering that less than half of this population was receiving an appropriate education prior to the passage of the Act. Yet the figure is disappointing because three out of ten handicapped children remained unserved or inadequately served a year after the Act mandated that all handicapped children were to be receiving a free and appropriate education.[10]

Between the 1977-78 and 1978-79 academic years, the number of states and territories reporting a net decrease in the number of children being served has dropped from nineteen to nine.[11] That there are any states which are showing declines is, however, quite disturbing. There will, of course, come a time when the effectiveness of special education and related service programs will actually bring about a reduction in the number of children requiring such services. In fact, as pointed out earlier, such a reduction is already evident in the speech-impaired child population. Meanwhile, the Congress and the Office of Special Education must pay close scrutiny to those jurisdictions which are failing to make progress in the identification and education of their still unserved or inadequately served handicapped children.

There is widespread recognition that handicapped youngsters remain unidentified or on lists waiting to be served. A survey by the HEW Inspector General's Office showed that three-quarters of school teachers and administrators believed that there were unserved children in their schools.[12] The problem may be most severe in rural areas where facilities and personnel are unavailable or difficult to gain access to. In some remote areas, services for handicapped children are not provided at all, while in other sparsely populated areas services are seriously inadequate. Rural school districts tend to be the poorest in the nation, and have difficulty being able to afford and recruit personnel for special educaion and related services.[13] The result is that handicapped children must often travel long distances to get the services they need, or worse, must spend years and sometimes even lifetimes in an institution.

Speech-language pathologists and audiologists throughout the nation have reported that they have thousands of students who have been identified as needing special education and related services but who remain unserved. Often the reason is insufficient professional staff. But we have also received many confidential reports of administrative policies that delay or prevent services. We are very concerned that many handicapped children are being denied an appropriate education not because of a failure to identify them, but because an inordinately long period occurs between identification and completion of the evaluation. In a recent policy paper, OSE has stated that placement in special education and related service programs cannot occur until the IEP is written. Development of the IEP, however, is entirely dependent on evaluation of the child's handicapping condition and instructional and rehabilitative needs. Because there is no time requirement for completion of the evaluation, many children enter a school year without the placement they require. Schools use this procedural flexibility as a legal means of delaying services which they cannot adequately provide due to lack of facilities, staff or other resources.

Child Count

The child count is central to the determination of how federal funds are to be allocated among the states. From the beginning of the Act's implementation, there have been problems with the child count procedure. The total number of handicapped children as well as the number in specific disability categories has remained lower than the numbers estimated by OSE. The agency's awareness of the discrepancies between projected and reported counts of handicapped children was made clear in its 1979 Report to Congress:

> This disparity between estimates and State counts is a source of keen concern, as is the great variation in the proportions of children the States have identified as handicapped. Although the incidence of handicapping conditions may be expected to vary across different populations, the current variations among States are so great, with many States serving far fewer children than the prevalence estimates would predict, that there is reason to believe many States are not serving all eligible children.[14]

There are two components to the child count problem. One is a procedural problem which can be, and to some extent already has been, rectified. When it was found that taking an average of two counts did not produce an accurate picture of children being served, the procedure was modified to require a single annual count. This change, included in the Education Amendments of 1978 (P.L. 95-561) reduces the amount of local administrative work and frees public funds for actual services. A lingering problem exists, however, where children receive special education during a substantial portion of the year (e.g., January - September), but happen to not be enrolled on the designated annual count date of December 1. It is essential that all children who have been enrolled in special education (even if their IEP ends prior to December 1) be included in the count.

The other component to the child count problem is more serious because it relates to the failure of school districts to actually identify and provide services to handicapped children within their jurisdiction. A major reason underlying this problem is the scarcity of funds for carrying out education for the handicapped programs. Because the law requires that a free appropriate public education was to have been made available to all handicapped children as of September 1, 1978, states accepting P.L. 94-142 funds must be in compliance with this mandate regardless of whether or not full authorized funding is being provided. Under a legal mandate but with limited resources for fulfilling it, it is sometimes easiest to simply not identify some handicapped children. The objective of non-identification can be brought about by action or inaction. In the first instance, regular or special education teachers may be pressured to not recommend for an IEP some of the less severely handicapped students they encounter. This Association has had frequent reports from its members in the public schools of such pressure coming from school officials. In the second instance, local and state educational agencies, along with school personnel, may consciously not engage in efforts to inform children and parents of their rights under the law.

A major reason why speech impairment is understated in official counts is that some states and localities are rewriting the definitions related to the speech impaired and are changing eligibility requirements to control or reduce the number of children who need to be served. As with other handicapping conditions, there exists a range of severity in speech impairments. Yet some states do not acknowledge that such a continuum exists and frequently classify speech problems as non-severe, and therefore not handicapped even though they are in need of special education and related services.

A final problem with the present method of counting handicapped children is the rule that a SEA "may not report a child under more than one disability category." [45 CFR 121.751(C)]. No allowance is made for the many multi-handicapped children receiving services from a variety of education professionals. Speech-language pathologists serve many children with multiple handicaps including those with learning disabilities, mentally and emotionally handicapped children, deaf and hard-of-hearing children. Studies done at the local level have shown that between 30 and 50 percent of children with handicapping conditions also have some kind of communicative disorder.[15] Because these children have a primary handicap other than speech impairment, they do not appear in the speech impaired child count figures. Allowing only unduplicated counts results in an underestimation of children with secondary handicaps, and also makes it difficult to determine the appropriate level of special education and related service personnel that is needed.

Evaluation

While neither the law nor the regulations provide a precise definition of the term "educational performance," it is obvious that the meaning goes beyond an assessment of academic performance. Through its inclusion of young children in the P.L. 94-142 program and its encouragement of preschool services in the states, Congress has demonstrated that by education it means more than the kind of academic performance that can be assessed by the testing of older children. Nor does the law suggest reliance on standardized tests and assessment techniques. In requiring and establishing procedures for the evaluation of handicapped children and the development of IEPs, Congress and OSE clearly sought to take into account the needs and performance of individual children.

There are exceptional children at all age levels who perform well by traditional academic criteria despite their handicaps. Certainly no one would seriously question the eligibility of a blind or deaf child for special education and related services because that child received outstanding grades. Similarly, speech-impaired children who are in need of special education and related services and are therefore handicappped as defined by the law could not be denied services because they happen to also perform well in academic subjects. Social and emotional adjustment and growth are, along with academic performance, important components of educational performance. For example, children who stutter may nevertheless receive good grades in the classroom. But because of their impairment, such children may be unable to build or maintain satisfactory interpersonal relationships with their peers and teachers. Their satisfactory academic performance may hide the fact that they are inhibited from developing their full potential in the overall educational environment. [See Appendix B for Office of Special Education and Rehabilitative Services policy interpretation of "adversely affects educational performance."]

Once out of school, such youngsters may experience difficulty in adjusting to their social environment and in finding appropriate employment. Their academic performance record will not sufficiently overcome the adverse effects of an uncorrected communicative disorder. A child with a speech impairment may do well in his course work because it mainly calls for visual and writing skills. But in seeking a position following graduation, the youngster will be required to display oral skills that demonstrate an ability to communicate effectively in a job situation.

Implementation of the IEP

Many implementation problems relate to the way the regulations are interpreted rather than to the contents of the law itself. The Office of Special Education has made significant strides toward clarifying the meaning of its regulations in order to facilitate their implementation at the state and local levels. A recently developed OSE policy paper seeks to respond to questions and problems concerning the purpose, meaning, and requirements of individualized education programs. The Office has held that the states should be given latitude in which to interpret and implement the law's requirements. Some states, of course, have education for handicapped children statutes that predate P.L. 94-142, and many have seen fit to go beyond the requirements of the federal law. The real problem arises when state and local education agencies establish procedures or engage in actions that have the effect of not fulfilling requirements of the federal law. Situations then arise where a child in one state is denied opportunities or services that are available in other states due to different interpretation of the statute and the regulations. In effect, the child is not receiving full and equal educational opportunities and thus is being denied equal protection under the law. The practical effect of OSE's efforts at clarifying the P.L. 94-142 regulations should be to increase uniformity in the way the law is applied in different jurisdictions. It is also essential that expert information, comments, and advice be solicited for the purpose of making policy positions as full and clear as possible. We hope these efforts by the Office of Special Education will continue.

Recommendations[16]

- Because there is such a large incidence of handicapped children enrolled in school but unserved by the programs they need, it is essential that federal and state data collection guidelines provide a means for ascertaining the number of such unserved children. This information would permit OSE and the SEAs to plan for funding, personnel and service programs based on a realistic picture of unmet needs in the schools. ASHA has recommended that OSE implement a procedure for the collection of data on handicapped children who are enrolled in school but not being served. Program administrators and service providers in the local education agencies should work together toward solutions to the waiting list problem.

- Many children have multiple handicaps. Because only primary handicapping conditions are included in the annual child counts, however, information about other disabilities is not collected. A large number of children served by speech-language pathologists, for instance, are not reported as having communicative disorders because of the federal child count requirements. ASHA has recommended that a procedure be implemented for the collection of data that would supplement the child count data now required for federal funding. These data are needed to determine the total number of special education and related services provided in the country and to determine personnel needs.

- In order to eliminate the problem of handicapped children who are served during part of a year being excluded from the annual child count, OSE should require the state education agencies to account for every handicapped child who has received special education and related services during the prior calendar year. In this way, federal funding will be appropriately applied toward services actually rendered to handicapped children under the program.

- ASHA has recommended that OSE ascertain if state and local education agency policies or practices have had the effect of denying a continuum of services to communicatively impaired children. We suggested that the agency take necessary action to assure that such services are provided.

Personnel Deficiencies

The availability and utilization of specialists to deal with the various disabilities is integral to the achievement of appropriate education for handicapped children. For this reason, there must be a continuing expansion of programs to train special education and related service professionals such as audiologists, occupational therapists, and school psychologists. Also important is the "inservice training" of all educational personnel, including regular classroom teachers and school administrators, who interact with handicapped children. Instead of being expanded, however, these programs of personnel development are now being cut back.

Under the provisions of a "Comprehensive System of Personnel Development," each participating state must submit to the Commissioner of Education for approval a plan which sets forth:

> a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained. [Section 613(a)(3) 89 Stat. 782]

The Final Regulations implementing P.L. 94-142 provide that state educational agencies must include data in their annual program plans which detail the current level of personnel and the number of additional personnel needed for special education and related services, including:

> school psychologists, school social workers, occupational therapists, physical therapists, home-hospital teachers, speech-language pathologists, audiologists, teacher aides ...and other instructional and noninstructional staff. [45 CFR §121a.126(b)(2)]

The regulations also outline the procedures to be followed by the states in providing for and reporting on personnel training programs designed to remedy personnel deficiencies and to assure the ongoing training of existing personnel. [45 CFR §121a.380-383] In order for the concept of education in the least restrictive environment to work, regular classroom teachers must receive training that will enable them to understand the unique problems of and to work effectively with handicapped children. By making this requirement a part of all teacher training programs, future generations of classroom instructors will be adequately prepared to work with handicapped students, and inservice training programs will no longer be necessary. According to the Office of Special Education, the needs for specific disability specialists far outweigh their current availability. In the 1976-1977 school year, OSE reported that there were 18,390 specialists available to serve the speech impaired and 8,787 teachers of the hearing impaired. However, OSE projected the need for 22,254 speech-language pathologists and teachers of the speech impaired by 1978-1979, and 13,766 teachers of deaf and hard-of-hearing children for that academic year.[17] A recent ASHA study of state education agencies found over 1,500 funded but unfilled positions (see Appendix A). As a result of the shortage of qualified personnel, many school districts are forced to hire less than qualified personnel in order to fulfill the full education requirement of P.L. 94-142. However, the inevitable result of this weak employment qualification standard is that many children do not receive an appropriate education.

The services provided by speech-language pathologists and audiologists are important with respect to (a) identification, evaluation, and treatment of speech and hearing impaired children; (b) instruction and counseling for children with communicative disorders; and (c) aiding children in overcoming communicative handicaps which are a barrier to success in their overall educational development. As with any handicapping condition, the provision of quality services to the communicatively handicapped depends on a realistic professional-to-student ratio. Just what an appropriate ratio is depends, in turn, on factors such as school location and classroom setting, the age groups involved, the severity of individual student's handicaps, and the existence of other handicapping conditions.

The OSE Report to Congress reveals that there is a nationwide average of one speech teacher/speech-language pathologist for every 44 speech-impaired children. However, in some states the ratio was close fo 1:100.[18] An ASHA survey of local school districts found that the average caseload during the 1977-1978 academic year was 58 speech-impaired pupils for every speech-language pathologist. However, the caseloads ranged from a low of 1:20 to a high of 1:150. The projected caseload needed by 1980 is 44.5 children, with a range of 12 - 75 per speech professional.[19]

The situation is even more critical with regard to services for hearing-impaired children. ASHA estimates that of every 10,000 school-age children 57.5 can be expected to suffer from some kind of hearing impairment. The audiologist plays a dual role in the public schools: the screening of all children in order to identify those with hearing losses, and the provision of necessary services to those who have been identified as hearing impaired.

The ASHA survey found an average of only 1.41 audiologists per school district in 1977-1978, an actual decrease from the number in the previous school year. The availability of audiologists varies greatly among the states, but in no state is the number sufficient to meet the hearing conservation and audiologic rehabilitation needs of the student population. In Georgia the audiologist-pupil ratio is 1:20,000. In Ohio and South Dakota the ratio is 1:10,000. In Kansas, the ratio is 1:7,000. In the area of hearing services, the appropriate staff-pupil ratio depends to a large degree on the range of services that are to be provided. A lower ratio is appropriate when audiologists provide comprehensive assessment and rehabilitative services and not just identification and evaluation services. This Association, along with the Conference of Executives of American Schools for the Deaf, has determined that when audiologists are involved in providing special instructional and habilitative services in an educational setting, there should be a minimum of one audiologist for every 75 hearing impaired children.[20] However, if a school district desires adequate screening of its students as part of a preventive health program, a considerably larger number of audiologists is needed to serve both the general and the hearing impaired student populations.

The lack of sufficient numbers of speech and hearing specialists makes it impossible for many school districts to comply with the mandate of "appropriate" educational opportunities for all. Where there are not enough professionals, caseloads are high. And where caseloads are high, proper attention to individuals is impossible. The disappearance of appropriate personal instruction when caseloads are excessive and classrooms are overcrowded is not always obvious in the reporting of hours of service. A speech-language pathologist might carry a caseload of 80 children and attempt to work with each child every week. For the individual pupil, this might mean enrollment in a group with three other children for a half-hour session twice a week. The child will receive only eight hours of instruction. It is easy to see from this example that the actual size of a specialist's caseload is critical to the likelihood or unlikelihood of adequate instruction.[21] (Refer also to Appendix A).

Audiologic Services

Hard of hearing children have been referred to as the "forgotten population" in our public schools.[22] A study by the Rand Corporation in 1974 reported that about 440,000 public school children could be labeled hard of hearing, but that only one in five was receiving appropriate services.[23] In 1975-1976, around the time P.L. 94-142 was being enacted, approximately 20 percent of all hard-of-hearing children were receiving services.[24] The most recent estimates by OSE indicate that only 30 percent of this category of handicapped students are currently receiving services - although the law mandates that all handicapped children should now be receiving appropriate special education and related services.[25]

An individual's ability to speak and to use language is based on innate physiological factors coordinated through an auditory system. The ability to hear sounds is thus crucial to normal speech and language development, and communication skill, in turn, forms the foundation for educational, social, and emotional development. Children who suffer from congenital, developmental, or accidental hearing impairments will experience difficulties in developing communication skills and in interacting with others. Fortunately, most hearing-impaired children possess significant residual hearing capacity. With proper evaluation of the child's condition and rehabilitative potential, his or her communicative problems can be significantly reduced through audiological rehabilitation, speech and language services, and hearing aid use. Unfortunately, utilization of this residual hearing capacity has been quite low among school-age children. Many children with mild hearing impairments go unrecognized or are misdiagnosed. Evidence shows that at any given time at least half of the hearing aid devices used by children are not very helpful. This may be due to improper fitting, improper usage due to inadequate orientation in utilizing the aids, or mechanical malfunctioning. Many other children who could benefit from a hearing aid do not even possess one.

Children with a slight to moderate hearing loss do not usually exhibit the more overt characteristics associated with severe hard-of-hearing and deaf persons. For many children, hearing difficulties are often undetected or overlooked, while their failure to learn is attributed to limited mental ability, behavior problems, poor motivation, or lack of interest. Even students whose hearing difficulties are recognized may not receive appropriate instructional and rehabilitative services. Sometimes this is due to the regular classroom teacher's lack of knowledge about children with disabilities and how to deal with them. At other times, appropriate educational services are not forthcoming because of conflicts over roles and responsibilities among the professional staff who come into contact with the students. Often the problem is due to the unavailability of appropriate personnel. This is certainly true with respect to audiologic services. For the 1977-1978 school year, OSE found that there were 709 audiologists employed in the nation's schools. Yet, based on the previously cited minimum need of one audiologist for every 75 hearing-impaired children and OSE's finding of 86,362 hearing impaired and deaf students in 1978-1979,[26] there would appear to be a need for at least 1,151 audiologists - just to provide needed services to those actually identified as having hearing disorders.

Under the Education for All Handicapped Children Act, audiology is broadly defined to include (a) identification of hearing impaired children; (b) determination of the nature and extent of hearing loss; (c) provision of habilitative services such as language habilitation and speech reading (lip reading); (d) programs dealing with the prevention of hearing loss; (e) counseling and guidance of pupils, parents, and teachers regarding hearing loss;

and (f) determining the need for and providing amplification, including hearing aid selection, fitting, and orientation. [45 CFR, §121a.13(b)(1)]

The enactment of P.L. 94-142 has broadened the range of services provided by educational audiologists. Formerly, audiologists in public schools were mostly concerned with hearing evaluation and conservation programs. Now, the audiologist works more closely with the individual child actually identified as having a hearing impairment. Typically, the audiologist is responsible for a complete diagnostic study, evaluation of the need for amplification, counseling of students and parents on rehabilitation and hearing aid usage, and coordination of a hearing aid orientation program.

The provision of these audiologic services has been generally unavailable to public school children in the past. But now, under P.L. 94-142, the services are mandatory. If a child's individualized education program states that audiologic services and hearing devices are essential to an appropriate education, then these must be provided. Moreover, the regulations require state and local education agencies to "insure that the hearing aids worn by deaf and hard-of-hearing children in school are functioning properly." [45 CFR §121a.303] In an attached comment, it is noted that Congress "expects [that] the Office of Education will ensure that hearing-impaired school children are receiving adequate professional assessment, follow-up and services."

The problem of interagency cooperation in providing diagnostic and rehabilitative services to handicapped children is a serious one, and perhaps nowhere is the problem more evident than in the area of services for the hearing impaired. In the past, Medicaid, Head Start, and Maternal and Child Health and Crippled Children's programs supported audiologic services and hearing aids for many school children. Now, because P.L. 94-142 delegates this responsibility to the school system, many of these public agencies are refusing to continue funding for these services and benefits.

State and local education officials, meanwhile, have balked at the prospect of having to use their limited P.L. 94-142 funds for audiologic services and for the purchase, maintenance and professional management of hearing aids. They are reluctant to pay outside public agencies for services they believe should continue to be the responsibility of those agencies. As noted above, the other social agencies do not share this view. Another difficulty with the SEA's and LEA's position in this matter is that programs like Medicaid and Crippled Children's serve only a portion of the total handicapped population - children from socioeconomically disadvantaged families and some who reside in rural areas.

Interagency agreements are needed in order to avoid duplication of services, but more importantly to avoid situations in which the inability or unwillingness of agencies to agree on where responsibility for providing services lies results in handicapped children being denied necessary services altogether. Cooperation is particularly important in the realm of related services and in outlying areas - situations in which the appropriate personnel and facilities may not be found in the schools themselves. Arrangements for services should be based on the needs of individual handicapped students and not on administrative procedures or convenience. Facilities outside of the schools such as hospitals, clinics, rehabilitation centers, and private practitioners' offices should be utilized when available and when needed. In short, the coordination of services among public agencies must be based on the overriding goal of guaranteeing that handicapped children receive the free and appropriate education to which they are entitled.

Some education officials claim that their responsibility to use public funds for hearing aid procurement and servicing is limited to the utilization of the devices in the school setting. If such devices are also needed outside the classroom - at home or elsewhere - then the responsibility for providing them should not belong to the education agency. In fact, the vast majority of hearing aids used by school have been purchased privately. We believe that these attitudes are counter to the purpose of the Education for All Handicapped Children Act. They represent an extremely narrow definition of the education concept. P.L. 94-142 is based on the idea that an appropriate education requires the participation of children, parents, regular and special education teachers, and disability specialists, and that learning is not confined to the classroom, but extends throughout the child's academic and social environment.

Cooperation is the key to making this Act work - cooperation between Congress and OSE, between the federal government and the states, between state and local education agencies, between public and private education and health organizations, between parents and school personnel.

In closing, we want to restate this Association's support of the Education for All Handicapped Children Act and our eagerness to work with this Subcommittee and other Members of Congress in a continuing effort to make the promise of this law a reality.

FOOTNOTES

1. Statement of Gregory J. Ahart, Director, Human Resources Division, United States General Accounting Office, before the Subcommittee on Handicapped of the Senate Committee on Labor and Human Resources on the Education for All Handicapped Children Act of 1975 (September 10, 1980).

2. The setting of priorities for unserved children and children with the most severe handicaps pertained to the first year of the Act's implementation. After September 1, 1978, a free appropriate education was to be made available to all handicapped children.

3. Statement of Gregory J. Ahart, *op. cit.*, p. 22.

4. Byrne, Paul, "Report of Handicapped Children Receiving Special Education and Related Services as Reported by State Agencies Under P.L. 94-142 and P.L. 89-313: School Years 1976-77, 1977-78, 1978-79, 1979-80. Data include children under P.L. 94-142 only. Indication of an increase in the number of children with severe speech impairments is reported in: Blanchard, M.M., "An Investigation of the Impact of Massachusetts Special Education Law Chapter 766 on Public School Speech, Language and Hearing Clinicians: Implications for Training (unpublished doctoral dissertation, University of Massachusetts, 1976); Barbara D. Katz-Brown and Susan T. Karr, "Impact of P.L. 94-142 on New York School Clinicians: Pilot Study" (unpublished, 1980).

5. The only partial exception is New Hampshire which leaves to the local education agency the responsibility for determining whether a service is special education or a related service.

6. Statement of Gregory J. Ahart, *op. cit.*, pp. 11-12.

7. J. W. Helmick, "Effects of Therapy on Articulation Skills in Elementary School Children," *Language, Speech and Hearing Services in Schools*, Vol. Viii, No. 30 (July 1976): 169-172.

8. "Recommendations for Increasing Funds Under P.L. 94-142," American Speech-Language-Hearing Association, School Services Program (draft, November 1978).

9. "Language, Speech, and Hearing Programs in the Schools - Survey Data," American Speech-Language-Hearing Association, School Services Program (September 1978).

10. Bureau of Education for the Handicapped, U.S. Department of Health, Education and Welfare, *Progress Toward a Free Appropriate Public Education: Semiannual Update of the Implementation of Public Law 94-142, The Education for All Handicapped Children Act* (August 1979), pp. 1-2.

11. *Ibid.*, p. 2.

12. Bureau of Education for the Handicapped, statement by Edwin W. Martin, Deputy Commissioner, before the Subcommittee on Select Education, U.S. House of Representatives. (October 24, 1979), p. 6.

13. Judy Schrag, Lucretia Swinburne Farago, and Lisa Walker, "Education of Handicapped Children in Rural Areas," a paper prepared for the Rural Education Seminar (May 29-31, 1979).

14. Bureau of Education for the Handicapped, U.S. Department of Health, Education and Welfare, Progress Toward a Free Appropriate Public Education: A Report to Congress on the Implementation of Public Law 94-142, The Education for All Handicapped Children Act (January 1979), p. 17.

15. ASHA School Services Program has received reports from: Iowa State Department of Public Instruction; Fountain Valley City Schools in Ohio; and the Dallas public school system.

16. An earlier version of these recommendations was contained in a letter from Stan Dublinske, Director of ASHA's School Services Program to Garry McDaniels, Director of BEH Division of Aid to the States (February 8, 1980).

17. Bureau of Education for the Handicapped, Progress Toward a Free Appropriate Public Education (January 1979), p. 193, Table D3.4. Note: The figures in this statement are correct, although the tables in the BEH Report are mislabeled. Individual state counts are not uniform because some states included both speech-language pathologists and teachers of the speech impaired while others included one or the other. One state counted speech-language pathologists among teachers for the learning disabled. Similarly inconsistent combinations occurred in the state counts of audiologists, teachers of the hearing impaired, itinerant teachers and counselors of the deaf and hard of hearing. Speech-language pathologists generally have more education and training than teachers of the speech impaired.

18. Ibid. p. 57; p. 190, Table D.3.1.

19. "Language, Speech, and Hearing Programs in the Schools," American Speech-Language-Hearing Association (1978).

20. American Speech-Language-Hearing Association and Conference of Executives of American Schools for the Deaf, "Guidelines for Audiology Programs in Educational Settings for Hearing Impaired Children," Asha, Vol. 18, No. 5 (May 1976): 291-294.

21. See Stan Dublinske, "P.L. 94-142: Developing the Individualized Education Program," Asha, Vol. 20, No. 5 (May 1978): 380-393.

22. Julia Davis, (Ed.) Our Forgotten Children: Hard of Hearing Pupils in the Schools. A publication of the National Support Systems Project under a grant from the Division of Personnel Preparation, Bureau of Education for the Handicapped. (U.S. Office of Education, Department of Health, Education and Welfare, 1977).

23. G. D. Brewer, and J. S. Kaklik, *Improving Services to Handicapped Children*. (Santa Monica, California: Rand Corporation, 1974).

24. Bureau of Education for the Handicapped, (U.S. Office of Education, Department of Health, Education and Welfare, 1976).

25. Bureau of Education for the Handicapped, U.S. Department of Health, Education and Welfare, "Report of Handicapped Children Receiving Special Education and Related Services as Reported by State Agencies Under P.L. 94-142 and P.L. 89-313 School Year 1978-1979" (1979).

26. *Ibid*.

APPENDIX A CASELOAD REQUIREMENTS POSITIONS FUNDED BUT UNFILLED

	Mandated Maximum	Speech-Lang. Path.	Audiologists
abama			
aska	None	NR	NR
izona	None	NR	NR
kansas	50	NR	0
alifornia		700	
olorado	50	3	0
onnecticut	None	25	0
elaware			
istrict of Columbia			
lorida	None	70	NR
eorgia	Severe-20 / Mod-40 / Mild -60	60	2
awaii	None	2	NR
daho	None	NR	NR
llinois	80	100-150	NR
ndiana			
owa	0 for itinerant; 18 - resource	27	NR
ansas	None	47	3
entucky	75 mild/moderate	50	NR
ouisiana			
aine	50	NR	0
aryland			
assachusetts	None	NR	NR
ichigan	75	NR	NR
innesota	Indirect service-60; direct-40	70	0
ississippi	60	NR	NR
issouri	85	NR	NR
ontana	None; suggested 60	9	0
ebraska	70	Several	3
evada	60	5	NR
ew Hampshire	None	NR	NR
ew Jersey	None	NR	NR
ew Mexico	90 for "A" & 36 (resource)	NR	NR
ew York	75-related; 20-severe	0	0
orth Carolina	None	30	1
orth Dakota	None	10	1
hio			
klahoma			
regon	None	20	NR
ennsylvania	20-90*	0	2
hode Island			
outh Carolina	100	70	0
outh Dakota	70	12	0
ennessee	None	NR	NR
exas	None	NR	NR
tah	60	20	5-10
ermont	None	8	0
irginia	75; 65 max. state reimbursement	NR	NR
ashington	42	NR	NR
est Virginia	Must not exceed 40	14	0
isconsin	30 itinerant/resource	93	NR
yoming	None	6	0

*May be met in a variety of ways: 20 students (5 sessions per student per week);
45 students (2 sessions per student per week);
90 students once a week.

APPENDIX B

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C.

MAY 30 1980

Mr. Stan Dublinske, Director
School Services Program
American Speech-Language
& Hearing Association
10801 Rockville Pike
Rockville, Maryland 20852

Dear Mr. Dublinske:

Recently, you requested a policy interpretation of the term "adversely affects educational performance" as it relates to speech impaired children. You indicated that the American Speech-Language-Hearing Association (ASHA) has received reports that some State and local educational agencies are requiring educational assessments of all speech impaired children as part of the evaluation process in order to determine their eligibility for special education and related services.

The broad issue raised in your inquiry is whether the definition of "speech impaired" in the regulations implementing the Education of the Handicapped Act, Part B (as amended by P.L. 94-142) is interpreted to mean that children with communicative disorders who have no other handicapping condition are ineligible for services as "handicapped children" unless educational assessments indicate concomitant problems in academic achievement. An interpretation is needed because "educational performance" is not specifically defined in the Part B regulations. However, the standard for determining whether a child fits into any of the categories of handicaps listed in the Act and regulations is that the impairment "adversely affects a child's educational preformance." Under Section 602(1) of the Act, a child with one of the listed impairments must need special education to be a "handicapped child". For children who need a "related service" but no other special education services, the Part B regulations in section 121a.14(a)(2) allow a State to consider that service as "special education", bringing those children within the scope of the Act.

I agree that an interpretation which denies needed services to speech impaired children who have no problem in academic performance is unreasonably restrictive in effect and inconsistent with the intent of the Act and regulations.

There is strong support in the Act and regulations for a broad construction of the term "educational performance". By its terms, the Act affords some services (and encourages States to provide more) to infants and preschoolers with the kinds of handicapping conditions listed in the statute. "Speech impaired" is one of those categories of handicapping conditions. Obviously, assessments of academic performance (through standardized achievement tests in subject matter areas) would be inappropriate or inconclusive if administered to many such children. The meaning of "educational performance" cannot be limited to showing of discrepancies in age/grade performance in academic subject-matter areas.

The extent of a child's mastery of the basic skill of effective oral communication is clearly includable within the standard of "educational performance" set by the regulations. Therefore, a speech/language impairment necessarily adversely affects educational performance when the communication disorder is judged sufficiently severe to require the provision of speech pathology services to the child.

The process for determining a child's disabilities and need for educational services is described in Sections 121a.530-533 of the Part B regulations. These evaluation and placement procedures contemplate that the diagnosis and appraisal of communicative disorders as handicapping conditions would be the responsibility of a qualified speech-language pathologist. (see, also, the definition of "speech pathology" in Section 121a.13(b)(12)).

Section 121a.532 sets minimum requirements for the evaluation procedures that public educational agencies administer.

Section 121a.532(f) indicates the possible range of areas for assessment (i.e., health, vision, hearing, social-emotional status, general intelligence, academic performance, communicative status, and motor abilities). However, the "comment" following this section states:

> Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate decision.

The "multisource" requirement of Section 121a.533(a)(1) makes public agencies responsible for using information from a variety of sources in interpreting evaluation data and making placement decisions. Listed sources include: "...aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior". Following this section is a "comment" which clarifies the multisource requirement in relation to speech-language children:

> Paragraph (a)(1) includes a list of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance...For example, while all the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the speech-language pathologist, in complying with the multi-source requirement, might use (1) a standardized test of articulation and (2) observation of the child's articulation in conversational speech. (Emphasis added.)

Any public agency requirements which impose procedures more extensive or stringent than those in the Federal regulations must be scrutinized in light of these clarifying comments. It is clear that, in establishing the existence of a speech/language impairment that is "handicapping" in Part B terms, a professional judgement is required. The basis for that judgment is the child's performance on formal and/or informal measures of linguistic competence and performance, rather than heavy reliance on the results of academic achievement testing. The impact of the child's communicative status on academic performance is not deemed the sole or even the primary determinant of the child's need for special educational services. It is the communicative status - and professional judgments made in regard to assessments of communicative abilities - which has overriding significance.

In the event that the speech-language pathologist establishes through appropriate appraisal procedures the existence of a speech/language impairment, the determination of the child's status as a "handicapped child" cannot be conditioned on a requirement that there must be a concurrent deficiency in academic performance.

It was not the intent of the Act to reduce services to handicapped children. The practice which you have brought to our attention could have that kind of negative effect. I appreciate your inquiry on behalf of children with speech/language impairment and trust that this response has made clear the Office's position on this issue.

Sincerely,

Edwin W. Martin
Acting Assistant Secretary
for Special Education & Rehabilitative Services

cc: Garry McDaniels
Jack Jones
Tom Irvin
Bill Tyrrell
Jerry Vlasak

APPENDIX C

PL 94-142: A RESOURCE BIBLIOGRAPHY

The following materials on PL 94-142 can be used for pre-service or continuing education activities.

A Guide to Understanding the Education for All Handicapped Children Act (PL 94-142)Questions and Answers on the Federal Law and Regulations. American Federation of Teachers AFL-CIO, Dupont Circle N.W., Washington, D.C. 20036. Item 435 ($5.00 for 100 copies).

A Summary of Selected Legislation Relating to the Handicapped. U. S. Department of Health, Education, and Welfare. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (70c)

A Teacher's Reference Guide to P.L. 94-142. National Education Association, 1978. 1201 16th Street, N.W., Washington, D.C. 20036.

Amicus: A booklet published by the National Center of Law and the Handicapped. Subscriptions are $10 per year, National Center for Law & the Handicapped, 1235 North Eddy Street, South Bend, Indiana 46617.

An Analysis of Public Law 94-142. Washington, D.C., National Assoc. of State Directors of Special Education, 1976. ($2.00).

Clarification of P.L. 94-142 for the Classroom Teacher. 1978. Publications Office, Research for Better Schools, Inc., 1700 Market Street, Philadelphia, PA 19103.

Education for the Handicapped Law Report: Publication includes all of the legislation related to the handicapped plus information on court decisions and state education agency hearing decisions related to handicapped individuals. The subscription rate is $300 per year, CRR Publishing Company, 1156 15th Street, N.W., Suite 724, Washington, D.C. 20005.

Education of Handicapped Children, P.L. 94-142 Regulations, *Federal Register*, Vol. 42, No. 163, August 23, 1977.

Education of the Handicapped: A biweekly newsletter on Federal Legislation, programs and funding for special education. Capitol Publications, Inc., Suite G-12, 2430 Pennsylvania Ave., N.W., Washington, D.C. 20037. The annual subscription rate is $105.

Handicapped American Reports: A bi-weekly newsletter. Handicapped American Reports, 2626 Pennsylvania Ave., N.W., Washington, D.C. 20037.

The Handicapped, the Teacher and the Law. 1978. A filmstrip package from National Education Association, 1201 16th St., N.W., Washington, D.C. 20036 (202) 833-4336.

IEP Packet. Foundation for Exceptional Children, 1920 Association Dr., Reston, VA 22091. ($65)

Implementating Procedural Safeguards. Filmstrip. Council for Exceptional Children, 1920 Association Dr., Reston, VA 22091, #167. ($90).

Non-Discrimination on the Basis of Handicap (Section 504). Federal Register, 42, May 4, 1977.

Preparing for the IEP Meeting. Council for Exceptional Children, 1920 Association Dr., Reston, VA 22091, #188 ($35).

Primer on Due Process. Council for Exceptional Children. 1920 Association Dr., Reston, VA 22091, #104 ($4.95).

Public Law 94-142 and Section 504 - Understanding What They Are and Are Not. 1977. Council for Exceptional Children, Unit 9, 1920 Association Dr., Reston, VA 22091. (50c for 1 to 9 copies, 10 or more 40c).

P.L. 94-142 Developing the Individualized Education Program, Asha, May 1978, p 380.

P.L. 94-142: How It Affects Teachers. Audio Material with discussion guide, 1978. National Education Association, stock #1593-2-00.

P.L. 94-142, The Education for All Handicapped Children Act of 1975. Filmstrip, Council for Exceptional Children, Unit 9, 1920 Association Drive, Reston, VA 22091. ($50).

Public Policy and the Education of Exceptional Children. Council for Exceptional Children, 1920 Association Dr., Reston, VA 22091, #123 ($14.25).

Privacy Rights of Parents and Students Final Rule on Education Records. Federal Register, 41, June 17, 1976.

Questions and Answers on P.L. 94-142. Washington, D.C.: National Association of State Directors of Special Education, 1976.

Reprints from American Education, Education of the Handicapped Today and A Bill of Rights for the Handicapped, June, 1976. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Stock #017-080-01569-2, (35c).

Right to Education Act P.L. 94-142. Filmstrip, Council for Exceptional Children, 1920 Association Dr., Reston, VA 22091. #136 ($50).

Section 504 of the Rehabilitation Act of 1973 Fact Sheet. March, 1978, Brochure: Department of Health, Education, and Welfare. Office of the Secretary, Office of Civil Rights, Washington, D.C. 20201.

Word from Washington: A newsletter available from the United Cerebral Palsy Assoc., Inc., Suite 141, Chester Arthur Building, 425 I Street, N.W., Washington, D.C. 20001.

Prepared by: Ellen Sarnecky, Director, Educational Planning Office,
School Services Program, ASHA, 10801 Rockville Pike,
Rockville, MD 20852

QUESTION FOR RUTHANN SAXMAN

1. You talk about the need for community involvement in order to improve services to handicapped people. Could you tell us a little more about the other community groups you usually work with and the services your organization provides?

In my testimony I dealt not with improving services to handicapped people but rather promoting better understanding of handicaps to allow for a more successful integration into society. I also mentioned that handicapped people should be recognized for their achievements.

As for the other groups I work with they are as follows:

A. The President's Committee on Employment of the Handicapped - They made it possible for me to have an article published that I had written concerning our parish's involvement with integrating the handicapped into our community.

B. Diocesan Council on the Handicapped of Arlington - I attended a seminar on dealing with a handicapped child in the religious education environment as far as discipline and educating them.

C. Arlington Council on Learning Disabilities - They were speakers at a program I put together to educate our parishioners about children with learning disabilities. I still speak with their President from time to time about their concerns.

D. Diocesan Council on the Handicapped of Buffalo, New York - I speak with their President from time to time on what is being done in their diocese for the handicapped.

As for the services my Committee provides they are as follows:

A. An attorney volunteers her services to aid people in the area of their rights, whether or not they have a problem that can be dealt with legally. In one instance we had a woman who had been a nurse for the local health service who, upon developing arthritis in her hands was told that if she voluntarily resigned they would guarantee her disability. The state subsequently denied her disability. My attorney prepared her to appeal this decision in Richmond and the appeal was successful. However, this is only instance of such violation of rights. Public agencies are well aware that the decision on disability is not made at the local level.

B. Another member of my committee is a social worker. She works with people in the area of helping them obtain whatever assistance they are entitled to, if any, and also assists them in filling out the appropriate forms.

C. Another member of my Committee is a special education teacher. At the present time we are preparing our own seminar to be held for the religious education teachers on how to deal with a handicapped child in the classroom.

D. Another member of my Committee is a legislative liaison on Capitol Hill. He obtains laws for our review and has in the past prepared my speeches.

In addition to these services, two of us alternate weekends providing a homebound parishioner with meals and teaching him how to be more independent. Another function of the Committee is to educate the parishioners in such a way that they understand and welcome the opportunity to have a handicapped person participate with them in the Mass. We were also very important in getting a ramp built at our church. We provided the people overseeing this matter with the present ANSI standards to insure that the ramp would be built according to the necessary qualifications. We pointed out to them that the door would have to be reversed and I am at the present time working with some people on deciding what part of the church it would be most appropriate to remove two rows of pews so that people in wheelchairs could have easy access to Communion and to leaving at the end of the Mass.

In closing I would like to say that I hope you find my answer to this question helpful and that you feel I have answered it sufficiently. Should you have any further questions please do not hesitate to contact me at 624-2454.

Senator **Randolph**. I think that could be helpful in connection with the hearing we have had today.

Senator Stafford and I would say that there is a possibility we may hold another hearing, but that will be subject to the decision that we will make with reference to concerns that surfaced during these hearings which might need additional exploration.

We are very grateful again to you for coming.

With that understanding, we thank also our guests and those who are concerned who have been with us. Thank you.

The meeting is adjourned.

[Whereupon, at 11:31 a.m., the subcommittee was adjourned.]

○